

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PROCEEDINGS BEFORE THE 494th)
MARICOPA COUNTY GRAND JURY)

RE:) 494 GJ 156

STEPHEN WETZEL, ANDREW KUNASEK)
SANDRA WILSON, GARY DONAHOE,)
THOMAS IRVINE AND DAVID SMITH.)
_____)

Phoenix, Arizona

January 4, 2010

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Lisa A. Bradley, RPR, CSR 9938
Court Reporter
Certificate Number 50442

PREPARED FOR:

COUNTY ATTORNEY

(COPY)

A P P E A R A N C E S

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COUNTY ATTORNEY:

MICHAEL BAKER, ESQ.

LISA AUBUCHON, ESQ.

GRAND JURORS PRESENT:

SUPERIOR COURT

P R O C E E D I N G

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MR. BAKER: This is 494, 156. This is the investigation of six individuals and they are as follows:

Stephen, S-T-E-P-H-E-N, Wetzel, W-E-T-Z-E-L;
Andrew, A-N-D-R-E-W, Kunasek, K-U-N-A-S-E-K.

The third is Sandra, S-A-N-D-R-A, Wilson
W-I-L-S-O-N.

The fourth is Gary, G-A-R-Y, Donahoe,
D-O-N-A-H-O-E.

The fifth is Thomas, T-H-O-M-A-S, Irvine,
I-R-V-I-N-E.

The sixth is David, D-A-V-I-D, Smith,
S-M-I-T-H.

This investigation involves eleven alleged counts and they are as follows:

One: Theft, that is as to Mr. Wetzel and Kunasek.

Two: Theft, as to Mr. Wetzel and Ms. Wilson.

Three: Violation of duties and liabilities of custodian of public moneys, that is, as to Mr. Wetzel and Mr. Kunasek.

Four: Violation of duties and liabilities of custodian of public moneys. That is as to Mr. Wetzel and Ms. Wilson.

1 Five and six, tampering with a public record.
2 That is as to Mr. Wetzel.

3 Seven: Conspiracy to commit hindering
4 prosecution or obtaining or obstructing criminal
5 investigations. That is as to Mr. Donahoe, Irvine and
6 Smith.

7 Eight: Obstructing criminal investigations,
8 that is as to Mr. Donahoe, Irvine and Smith.

9 Nine: Hindering prosecution, that is as to
10 Mr. Donahoe, Irvine and Smith.

11 Ten: Bribery of a public servant, that is as
12 to Mr. Donahoe.

13 Eleven: Participating in a criminal
14 syndicate. That is as to Mr. Donahoe, Irvine and Smith.

15 Anyone need any of that organizational
16 information repeated?

17 I take it by your silence the answer is no.
18 It is alleged these matters occurred as follows:

19 As to alleged Count 1, on or between December
20 the 2nd, 2008, and January 29th, 2009.

21 As to alleged Count 2, on or between February
22 the 27th, 2009, and March 7, 2009.

23 As to alleged Count 3, on or between December
24 2nd, 2008, and January 29th two thousand nine.

25 As to alleged Count 4, on or between February

1 the 27th, 2009 and March the 7, 2009.

2 As to alleged Count 5, on or between December
3 2nd, 2008, and January 29th, 2009.

4 As to alleged Count 6, on or between
5 February 27, 2009, and March 17, 2009.

6 As to alleged Count 7, on or between December
7 2nd, 2008, and December 15, 2009.

8 As to alleged count eight, on or between
9 December 2nd, 2008, and December the 15th, 2009.

10 As to alleged Count 9, on or between December
11 1st, 2008, and December 15, 2009.

12 As to alleged Count 10, on or between
13 December 1st, 2008 and December 15, 2009.

14 And, finally, as to alleged Count 11, on or
15 between December 1st, 2009 and December 15, 2009.

16 It is alleged that all of these events
17 occurred in Maricopa County.

18 Anyone need any of that organizational
19 information repeated?

20 THE FOREPERSON: On the dates of December 2nd,
21 2008 and 12/15/09 --

22 MR. BAKER: What counts are we talking about?

23 THE FOREPERSON: Let's see, 8, 9, 10 and 11.

24 MR. BAKER: Okay, let me go back to eight.

25 On or between December 2nd, 2008 and

SUPERIOR COURT

1 December 15, 2009, for alleged count eight.

2 THE FOREPERSON: Uh-huh.

3 MR. BAKER: Alleged Count 9, on or between
4 December 1st, 2008, and December 15, 2009.

5 Alleged Count 10, on or between December 1st,
6 2008 and December 15, 2009.

7 Did you also need 11?

8 THE FOREPERSON: Yes, please.

9 MR. BAKER: On or about December 1st, 2009 and
10 December 15, 2009.

11 THE FOREPERSON: Okay, that is what threw me off.

12 MR. BAKER: May I assist anyone else in any of the
13 organizational stuff? Okay.

14 To assist you in determining if probable
15 cause exists in this matter, the following statutes may be
16 appropriate for your consideration:

17 A.R.S. 13-105, 1801, 1802, 2301, 2308, 2310,
18 2407, 2409, 2510, 2601, 2602 and A.R.S. 35-301.

19 According to my records, A.R.S. 13-105, 1801,
20 1802, 2301, 2310 and 2510 were all read to the grand jury on
21 December the 7th, 2009, with all members of the grand jury
22 present.

23 According to my records, A.R.S. 13-2308,
24 2407, 2409, 2601, 2602 and 35-301 have not yet been read to
25 the grand jury.

1 So with that, let's begin with 2308.

2 I have made a copy for each of the members of
3 the grand jury. They can meet in the middle.

4 A.R.S. 13-2308, participating in or assisting
5 a criminal syndicate classification.

6 A: A person commits participating in a
7 criminal syndicate by:

8 One: Intentionally or managing, directing,
9 supervising or financing a criminal syndicate with the
10 intent to promote or further the criminal objectives of the
11 syndicate.

12 Or two: Knowingly inciting or inducing
13 others to engage in violence or intimidation to promote or
14 further the criminal objectives of a criminal syndicate or;

15 Three: Furnishing advice or direction in the
16 conduct, financing or management of a criminal syndicate
17 affairs with the intent to promote or further the criminal
18 objectives of a criminal syndicate;

19 Or four, intentionally promoting or
20 furthering the criminal objectives of a criminal syndicate
21 by inducing or committing any act or omission by a public
22 servant, in violation of his official duty;

23 Or five, hiring, engaging or using a minor
24 for any conduct, preparatory or in completion of any offense
25 in this section.

1 B: A person shall not be convicted, pursuant
2 to Subsection A of this on the basis of accountability as an
3 accomplice, unless he participates in violating this section
4 in one of the ways specified.

5 C: A person commit assisting a criminal
6 syndicate by committing any felony offense, whether
7 completed or preparatory with the intent to promote or
8 further the criminal objectives of a criminal syndicate.

9 D: Except as provided in Subsection E or F
10 of this section, participating in a criminal syndicate is a
11 Class 2 felony.

12 E: A violation of Subsection A, paragraph 5
13 of this section is a Class 2 felony.

14 D: The person convicted is not eligible for
15 probation, pardon, suspension or sentence or release of any
16 basis until the person has served the sentence imposed by
17 the court, the sentence is commuted.

18 F: Assisting a criminal syndicate is a Class
19 4 felony.

20 G: Use of a common name or common
21 identifying sign or symbol shall be admissible and may be
22 considered in proving the combination of persons or
23 enterprise required by this section.

24 We will move on to 13-2407. Again, passing
25 those out. It appears everybody has a copy of A.R.S.

1 13-2407 is entitled tampering with a public record;
2 classification.

3 A: A person commits tampering with a public
4 record if with the intent to defraud or deceive, such person
5 knowingly:

6 One: Makes or completes a written instrument
7 knowing that it has been falsely made, which purports to be
8 a public record or a true copy thereof, or alters or makes a
9 false entry in a written instrument, which is a public
10 record or a true copy of a public record.

11 Or two, presents or uses a written
12 instrument, which is or purports to be a public record, or a
13 copy of such public record, knowing that it has been falsely
14 made, completed or altered or that a false entry has been
15 made with the intent that it be taken as genuine;

16 Or three: Records, registers or files or
17 offers for recordation, registration or filing in a
18 governmental office or agency, a written statement which has
19 been falsely made, completed or altered, or in which a false
20 entry has been made or which contains a false statement or
21 false information;

22 Or four: Destroys, mutilates, conceals,
23 removes or otherwise impairs the availability of any public
24 record;

25 Or five, refuses to deliver a public record

1 in such person's possession, upon proper request of a public
2 servant, entitled to receive such record for examination or
3 other purposes.

4 B: In this section, public record means all
5 official books, papers, written instruments or records
6 created, issued, received or kept by any governmental office
7 or agency or required by law to be kept by others for the
8 information of the government.

9 C: Tampering with a public record is a Class
10 6 felony.

11 Moving on to 13-2409. Again, passing the
12 statute out.

13 A.R.S. 13-2409, object is entitled
14 instructing criminal investigations or prosecutions,
15 classification:

16 A: A person who knowingly attempts by means
17 of bribery, misrepresentation, intimidation or force or
18 threats of force to obstruct, delay or prevent the
19 communication of information or testimony relating to a
20 violation of any criminal statute to a peace officer,
21 magistrate, prosecutor or grand jury, or who knowingly
22 injures another in his person or property on account of the
23 giving by the latter or by any other person of any such
24 information or testimony to a peace officer, magistrate,
25 prosecutor or grand jury is guilty of a Class 5 felony,

1 except that it is a Class 3 felony if the person commits the
2 offense with the intent to promote, further or assist a
3 criminal street gang.

4 Moving on to 13-2601. I am passing this
5 statute out. Okay, I see now that everybody has a copy of
6 A.R.S. 13-2601 is entitled definition.

7 In this chapter, unless the context otherwise
8 requires;

9 One: Quote, employees, unquote, includes a
10 person employed by an enterprise or an agent or fiduciary of
11 a principle.

12 Two, quote, employer, unquote, includes an
13 enterprise or principle.

14 Three, quote, party officer, unquote, means a
15 person who holds any position or office in a political party
16 whether by election, appointment or otherwise.

17 Moving on to 13-2602. Again, passing the
18 statute out. A.R.S. 13-2602 is entitled bribery of a public
19 servant or a party officer; classification.

20 A: A person commits bribery of a public
21 servant or party officer if with corrupt intent:

22 One: Such person offers, confers or agrees
23 to confer any benefit upon a public servant or party
24 officer, with the intent to influence the public servants or
25 party officers vote, opinion, judgment, exercise of

1 discretion or other action in his official capacity as a
2 public servant or party officer;

3 Or two, while a public servant or party
4 officer, such person solicits, accepts or agrees to accept
5 any benefit upon an agreement or understanding that his
6 vote, opinion, judgment, exercise of discretion or other
7 action as a public servant or a party officer may thereby be
8 influenced.

9 B: It is no defense to a prosecution under
10 this section, that a person sought to be influenced was not
11 qualified to act in the desired way because such person has
12 not yet assumed office, lacked jurisdiction, or for any
13 other reason.

14 C: Bribery of a public servant or party
15 officer is a Class 4 felony.

16 That brings us to A.R.S. 35-301, and again,
17 passing that statute out. Okay, now, that everybody has a
18 copy of that statute, excuse me, 35-301 is entitled duties
19 and liabilities of custodian of public moneys, violations;
20 classification.

21 A public officer or other person, including
22 justices of the peace and constables charged with the
23 saving, keeping, transfer or disbursement of public money,
24 is guilty of a Class 4 felony, who.

25 One: Without lawful authority, appropriated

1 it or any portion thereof to his own use or to the use of
2 another.

3 Two, knowingly loans it or any portion
4 thereof.

5 Three, knowingly fails to keep it in his
6 possession until disbursed or paid out by authority of law.

7 Four, without authority of law, knowingly
8 deposits it or any portion thereof in a bank, or with a
9 banker or other person, except on specialty deposit for safe
10 keeping.

11 Five: Knowingly keeps a false account or
12 makes a false entry or erasure in an account of or relating
13 to it.

14 Six: Alters, falsifies, conceals, destroys,
15 or obliterates such an account with the intent to defraud or
16 deceive.

17 Seven: Knowingly refuses or omits to pay
18 over, handle public moneys in his hands, upon presentation
19 of a draft order or warrant drawn upon, such moneys by
20 competent authority.

21 Eight: Knowingly omits or refuses to
22 transfer the money when a transfer is required by law.

23 Nine: Knowingly transfers the money when not
24 authorized or directed by law.

25 Ten: Knowingly omits or refuses to pay over

1 to an officer or person authorized by law to receive it, any
2 money received by him when a duty is imposed by law to pay
3 over the money.

4 We will have you note that A.R.S. 13-1801,
5 1802, 2301, 5310, 2510, having read A.R.S. 13-2308, 2407,
6 2409, and 35 -- excuse me, 2601, 2602 and 35-301.

7 Are there any members of the grand jury who
8 would like to have the statutes reread or clarified at this
9 time?

10 I take it by your silence the answer is no.
11 The record should reflect the copies of all statutes
12 previously read to the grand jury have been provided for
13 your use during these investigations.

14 The name of the alleged victims in this
15 matter will be the residents of Maricopa County.

16 The witnesses who are here to testify today
17 include, Deputies Abrahamson, A-B-R-A-H-A-M-S-O-N, number
18 1725, with Maricopa County Sheriff's office.

19 And Deputy David Hendershott,
20 H-E-N-D-E-R-S-H-O-T-T, number 513 with the Maricopa County
21 Sheriff's Office.

22 Let the record reflect the entire grand jury
23 is present with the exception of Grand Jurors and
24

25 Also present in the grand jury room is Deputy

1 County Attorney Lisa Aubuchon, duly authorized by Arizona
2 state law to present evidence before this grand jury panel.

3 Ladies and gentlemen, the subject matter of
4 this investigation may have received some attention and
5 exposure in the news media.

6 At this time, Ms. Aubuchon is going to
7 provide a brief summary of this investigation.

8 MS. AUBUCHON: Thank you. This case involves Gary
9 Donahoe, who is currently as a judge at Maricopa County
10 Superior Court; Thomas Irvine, who is an attorney; and
11 Andrew Kunasek, who is a supervisor of Maricopa County Board
12 of Supervisor; Sandra Wilson, who is the Maricopa County
13 Assistant County Manager; David Smith, who is the Maricopa
14 County Manager; Steven Wetzel, who is a Maricopa County
15 employee, and also we'll be referencing Donald Stapley, Mary
16 Rose Wilcox and Barbara Mundell.

17 A summary of the case is that the case
18 involves allegations of public monies being spent to shield
19 county employees from criminal prosecutions.

20 And also allegations that county officials
21 and judges acted together to prevent an investigation into
22 the Criminal Court Tower project, with the benefit to the
23 court being that building, would go forward in exchange for
24 favorable court rulings and intimidation of prosecutors and
25 law enforcement.

SUPERIOR COURT

1 MR. BAKER: Ladies and gentlemen, is there anyone
2 on the grand jury who has read, heard, seen anything in the
3 news media regarding this investigation? And I see a fair
4 number of hands going up.

5 If you will bear with me, if you would keep
6 your hands up. Okay, the record should reflect the
7 following grand jurors have indicated they have had some
8 media exposure.

9 Grand juror

10

11 Directing this question to those who have
12 indicated that they have had media exposure.

13 Would the fact that you have been exposed to
14 media exposure in any way interfere or hinder your ability
15 to act fairly, impartially and without prejudice in
16 connection with this matter?

17 Grand juror

18 MS. : No problem.

19 MR. BAKER:

20 MS. No.

21 MR. BAKER:

22 MS. : No.

23 MR. BAKER:

24 MS. No.

25 MR. BAKER:

SUPERIOR COURT

1 MS. No problem.

2 MR. BAKER:

3 MS. No problem.

4 MR. BAKER:

5 MR. No.

6 MR. BAKER:

7 MR. No.

8 MR. BAKER:

9 MR. No.

10 MR. BAKER:

11 MR. No, no problem.

12 MR. BAKER: I would remind everyone on the grand

13 jury, any decision made by this grand jury must be based

14 solely on the evidence presented in this hearing.

15 This question, for those who have indicated

16 they have had media exposure, is there anyone on the grand

17 jury panel who because of his or her exposure to the media,

18 would not be able to render a decision in this matter based

19 solely upon the evidence presented during this hearing,

20 again, Grand Juror

21 MS. No problem.

22 MR. BAKER:

23 MS. No.

24 MR. BAKER:

25 MS. No.

1 MR. BAKER:

2 MS. No.

3 MR. BAKER:

4 MS. No.

5 MR. BAKER:

6 MS. No.

7 MR. BAKER:

8 MS. No.

9 MR. BAKER:

10 MR. No.

11 MR. BAKER:

12 MR. No.

13 MR. BAKER: Shaking your head?

14 MR. No.

15 MR. BAKER: And

16 MR. No.

17 MR. BAKER: I would advise everyone on the grand
18 jury that if at any time during the course of this
19 investigation you realize that you have had media exposure
20 that would in any way affect your ability to sit as a fair
21 and impartial juror, please request to be excused at that
22 time.

23 You are admonished that the summary of facts
24 you were given is not evidence and should be disregarded
25 entirely in your determination of whether or not probable

1 cause exists in this matter, again, noting the presence of
2 the entire grand jury with the exception of Grand Jurors
3 Guzman and Snider.

4 Those admonitions read to you this morning
5 concerning persons disqualified from serving as grand jurors
6 are applicable. I will take it by your silence these
7 admonitions do not apply to you.

8 THE FOREPERSON: We are about to consider the
9 matter of 494 Grand Jury Number 156 and the investigation
10 involving the individuals named. The usual admonition
11 applies.

12 MR. BAKER: Who do you want first?

13 MS. AUBUCHON: Abrahamson.

14 (Whereupon the witness enters the grand jury
15 room.)

16 MR. BAKER: Before you sit down, this young lady
17 will swear you in, Officer.

18

19 TIM ABRAHAMSON,

20 (called as a witness herein, having been first duly
21 sworn, was examined and testified as follows:)

22

23 EXAMINATION

24 BY MS. AUBUCHON:

25 Q Okay, good afternoon. Could you please introduce

SUPERIOR COURT

1 yourself to the grand jury.

2 A I am Detective Tim Abrahamson, badge 1725. I work
3 for the Maricopa County Sheriff's Office.

4 Q Can you give us a little bit about your background
5 and experience?

6 A I have been employed for about five years. I
7 started actually in the court system, Superior Court. From
8 there I moved on to a Special Assignment Unit. We were
9 roving patrol and trained with our SWAT team, there for 14
10 months.

11 Then I served in district four, which is our
12 Cave Creek, Carefree, Anthem area way up north and for a
13 little over a year. And I have been an organized crime
14 detective for just almost a year.

15 Q Okay, were you assigned to assist in an
16 investigation involving Gary Donahoe, David Smith, Andrew
17 Kunasek, Sandra Wilson, Steven Wetzel and Thomas Irvine?

18 A Yes, ma'am.

19 Q Okay, and when did you first get involved in that
20 investigation?

21 A In March of 2009.

22 Q And all of the events that we are going to talk
23 about, did they all transpire in Maricopa County?

24 A Yes, they did.

25 Q How did the sheriff's office, to your knowledge,

1 first become aware of -- about expenditures of public monies
2 for listening devices?

3 A In an article written in the Arizona Republic by
4 Yvonne Wingett.

5 Q And do you remember the approximate time frame of
6 that?

7 A March 10th.

8 Q Of 2000?

9 A 2009.

10 Q Okay. And to your knowledge, did anyone with the
11 sheriff's office contact the Republic about what they knew
12 about that incident?

13 A Yes. Shortly thereafter a day or two, Chief
14 Deputy Hendershot went and sat with Yvonne Wingett and JJ
15 Hensley to discuss what she had uncovered in that news
16 article.

17 Q And at some point, did the sheriff's office become
18 aware that Ms. Wingett had notified county officials that an
19 investigation was going to begin?

20 A Yes. After that meeting, JJ Hensley reported
21 that -- reported to one of our employees, Paul Chagolla,
22 that Yvonne Wingett had contacted somebody in the Maricopa
23 County and Board of Supervisors side to warn them of this
24 investigation.

25 Q And based on this information that the sheriff's

1 office obtained, did the sheriff's office begin an
2 investigation?

3 A Yes, ma'am.

4 Q Okay. Now, are you aware that there was an
5 indictment issued involving Supervisor Donald Stapley?

6 A Yes.

7 Q Was that indictment served on December 2nd of
8 2008?

9 A Yes, it was.

10 Q And could you tell us who is Andrew Kunasek?

11 A Andrew Kunasek is the District 3 supervisor for
12 Maricopa County.

13 Q Did you become aware that Mr. Kunasek and two
14 other employees of the county were served with grand jury
15 subpoenas relating to witness testimony on December 2nd,
16 2008?

17 A That's correct.

18 Q So on December 2nd of 2008, there was the
19 indictment being served on Supervisor Stapley and the grand
20 juror subpoenas; is that correct?

21 A That's correct.

22 Q Who is Steven Wetzel?

23 A Steven Wetzel is the director for OET, that is the
24 Office of Enterprise Technology for Maricopa County.

25 Q Who is Sandra Wilson?

1 A She is the Deputy County Manager for Maricopa
2 County.

3 Q And in approximately -- well, from December
4 through approximately February of 2009, was she acting
5 county manager?

6 A Yes, she was.

7 Q Who was the regular county manager?

8 A David Smith.

9 Q Who is Jeff Everett?

10 A Jeff Everett is the owner of Arizona Technical
11 Security. They are a technical firm in Maricopa County. He
12 has experience in counter eavesdropping is what he calls it,
13 sweeping for electronic listening devices, bugs, that kind
14 of thing.

15 Q And was he contacted on December 4th, 2008, two
16 days after the indictment and grand jury subpoena served?

17 A Yes.

18 Q Who contacted him?

19 A David Boynton.

20 Q Who is this?

21 A David Boynton works directly for Steven Wetzels,
22 who is also in the Office of Enterprise Technology.

23 Q And according to Mr. Everett, what happened in
24 that conversation?

25 A During that conversation, Mr. Everett tried to get

1 some information as to what they needed the services for.

2 And Boynton related that he didn't feel comfortable talking
3 about it on the phone and they needed to meet in person.

4 Q Did they actually meet up in person?

5 A Yes, that same day.

6 Q And now, to your knowledge, if law enforcement
7 places a listening device in someone's home or someone's
8 business, do they have to obtain a court order for that?

9 A Yes, they would.

10 Q Now, could you tell us when Mr. Everett met with
11 county employees that day?

12 A It was around 6 o'clock that same evening on
13 December 4th, 2008.

14 Q And who did he actually meet with?

15 A He met with David Boynton for the first couple of
16 minutes, according to his interview. After that, he was
17 joined by Steven Wetzel.

18 Q What did Steven Wetzel tell Mr. Everett they would
19 like to hire him to do?

20 A Wetzel indicated they had some information leaking
21 out of the county offices. They needed to get to the bottom
22 of it. And they needed him to perform sweeps for bugs. He
23 called them technical listening devices.

24 Q Was that referred to in an e-mail at some point by
25 Mr. Wetzel or involving Mr. Wetzel as a pest control?

1 A Yes.

2 Q Did Mr. Everett take on that job or that
3 responsibility?

4 A Yes, he did.

5 Q Okay. And did he or some of his employees end up
6 doing the sweep of the offices?

7 A Yes, that night.

8 Q Okay, so this was December 4th, 2008?

9 A Correct.

10 Q Did Mr. Wetzel indicate to them what priority
11 there was to certain offices or certain areas?

12 A He indicated there was very high priority for the
13 conversation room called the Tom Sullivan room, and the
14 communications closet, but he emphasized that the offices of
15 the Board of Supervisors and the county manager were also
16 their high threat level areas.

17 Q Were you aware that of a meeting that did
18 transpire on December 5th, 2008?

19 A Yes, there was a special Board of Supervisor
20 meeting on the 5th.

21 Q Was that closed to the public, to your knowledge?

22 A I don't believe so.

23 Q Do you remember if Thomas Irvine was involved in
24 that meeting?

25 A Yes.

1 Q Okay. And do you recall if the purpose of that
2 meeting was to discuss obtaining legal advice, other than
3 the County Attorney's Office?

4 A That's correct.

5 Q And that did occur on December 5th of 2008?

6 A Yes, it was.

7 Q Okay. Now, how much did Mr. Everett eventually
8 get paid for this sweep of the offices?

9 A On December 4th?

10 Q From the December 4th; correct?

11 A It was -- they agreed on price was \$10,000.

12 Q Did they pay Mr. Everett at that time?

13 A Not at that time.

14 Q Was there any type of paperwork that exchanged
15 hands at that time?

16 A Yes. There was an invoice generated for the work
17 that was done.

18 Q That was by Mr. Everett?

19 A Yes.

20 Q Was there anything provided by any of the county
21 employees authorizing this expenditure at that point in
22 time?

23 A As of December?

24 Q On December 4th, when they initially did the bug
25 sweep?

1 A There was no paperwork.

2 Q Now, at some point did paperwork get generated and
3 Mr. Everett get paid?

4 A Yes.

5 Q When did that transpire?

6 A I believe he received payment on January 26.

7 Q Okay, so it was about a month-and-a-half later?

8 A About a month-and-a-half later.

9 Q And before we discuss that, can you explain which
10 offices were actually swept? I think you said the board of
11 supervisors offices in this sweep for listening devices?

12 A Yes, there were, on the 4th is when it started.
13 They went into each office of the county supervisors, their
14 chiefs of staff, their personal secretaries, the county
15 manager, the deputy county manager, and basically they swept
16 the entire tenth floor of the 301 West Jefferson and County
17 Administration.

18 Q Was Mr. Everett ever told they were trying to find
19 out if there were any law enforcement listening devices at
20 that point?

21 A At that point, no.

22 Q A couple of weeks later or approximately
23 December 15, did Donald Stapley and/or Thomas Irvine contact
24 Mr. Everett?

25 A Yes.

1 Q Okay, can you tell us about that contact?

2 A Mr. Everett was initially contacted by
3 Mrs. Stapley, and then shortly thereafter Mr. Stapley
4 regarding doing a bug sweep on Mr. Stapley's home.

5 Q And was there an attorney involved in that?

6 A Yes.

7 Q And who was that attorney?

8 A Tom Irvine.

9 Q And is this the same Mr. Irvine that was meeting
10 with the Board of Supervisors on December 5th?

11 A Yes, it is.

12 Q And was there a negotiation being done by sweeping
13 Mr. Stapley's home?

14 A Yes. The negotiation was between Mr. Irvine and
15 Mr. Everett's attorney.

16 Q And at some point, did Mr. Stapley or Mrs. Stapley
17 indicate to Mr. Everett they were looking for law
18 enforcement listening devices?

19 A Yes, they did.

20 Q Did Mr. Everett respond if he found any he would
21 not be able to tell them anyway?

22 A That's correct.

23 Q What was his basis for saying that?

24 A Because as a law enforcement agency, if a
25 listening device was planted, it would have been the result

1 of a court order in place, so he would not only be able not
2 to touch the device, he wouldn't be able to tell the people
3 who he found as a result of that.

4 Q So did Mr. Stapley's home ever get swept by
5 Mr. Everett?

6 A It did not.

7 Q Okay. Now, let's talk about how Mr. Everett was
8 paid. Based on the amount, was it the information from
9 e-mail that you found, did it have to get approved by
10 someone at a certain level of management?

11 A Yes.

12 Q Okay. Can you kind of explain to the grand jury
13 how that is set up?

14 A There is what they call a threshold amount, which
15 is \$5,000. Anything under that they have regular approval
16 for or at least there was approval negotiated by e-mail to
17 spend that amount.

18 Anything above that would require a board
19 meeting or some kind of authorization to spend that kind of
20 money.

21 Q Now, are these public monies?

22 A Yes.

23 Q And are they supposed to be used only for county
24 business?

25 A Correct.

1 Q How was Mr. Everett paid?

2 A Mr. Everett was paid by a county credit card
3 called a P card or procurement card by a relatively low
4 level employee of OET, the Office of Enterprise Technology.

5 Q Now, this I am going to call it the bug sweep, if
6 that is okay. This was done on the county administration
7 offices?

8 A Yes, it was.

9 Q Not on the county information technology area?

10 A Correct, not OET.

11 Q Okay. So the payment that wasn't made from county
12 administration, it was made from the office of technology?

13 A Yes.

14 Q And who was the employee that they had pay this?

15 A Heather Dickey.

16 Q And do you know what her position is?

17 A I am not sure what her title is, but she works in
18 the accounts payable area.

19 Q Was she involved in this bug sweep at all in any
20 way?

21 A No.

22 Q So who asked her to pay for it?

23 A Her direct supervisor is John Hall.

24 Q And was Mr. Wetzel involved in that?

25 A Mr. Hall reports directly to Mr. Wetzel and

1 occasionally, as reported by Ms. Dickey, she has contact
2 with Mr. Wetzel who would give her direct direction.

3 Q Now, was there any type of memorandum or anything
4 prepared?

5 A There was what is called an emergency procurement
6 letter.

7 Q That was prepared by who?

8 A Mr. Wetzel.

9 Q What was contained in that emergency procurement
10 letter?

11 A In that emergency procurement letter Mr. Wetzel
12 described the emergency nature of a potential security
13 breach at the administration building as justification for
14 the expenditure.

15 Q And, to your knowledge, who actually approved
16 that? Anyone above Mr. Wetzel?

17 A Mr. Wetzel authored the letter and submitted it
18 for payment to Wes Bassinger of Materials Management. And
19 then it was ultimately approved by Bassinger, Brian Hushek
20 and John Hall.

21 Q And was anyone in the county board of supervisors
22 ultimately giving their approval on this?

23 A Reportedly it was Sandy Wilson.

24 Q Okay. We are talking about the December 4th,
25 2008?

1 A Oh, I am sorry. Then no.

2 Q Okay. Can you tell us Andrew Kunasek's role in
3 this?

4 A In the December 4th sweep?

5 Q Yes.

6 A I don't believe he had a direct role in that
7 initial payment process.

8 Q Okay. Can you review your reports, please. What
9 was Mr. Kunasek's role at the time in December of '08?

10 A Chairman of the board.

11 Q Okay. And was there an interview done with Max
12 Wilson by Channel 5?

13 A Yes, there was.

14 Q Okay. And do you remember when that interview
15 occurred?

16 A In April. I believe it was the 23rd of April.

17 Q Of 2009?

18 A Of 2009.

19 Q Was Max Wilson interviewed about who authorized
20 that December 4th bug sweep?

21 A Yes.

22 Q Okay. Who did he say authorized it?

23 A He indicated his predecessor, Andy Kunasek, signed
24 off on the sweeps.

25 Q That is on videotape with Mr. Wilson stating that?

1 A Yes.

2 Q And at the time Andrew Kunasek at the time was the
3 chairman of the board; is that correct?

4 A That's correct.

5 Q Now, Heather Dickey you said paid for this on her
6 credit card; correct?

7 A Yes, ma'am.

8 Q What was she told about what to do and why it was
9 being paid?

10 A She was told that no other accounts payable
11 personnel in her department were to be advised of what was
12 going on and she wasn't to talk to anybody else about it.
13 She was told that by Mr. Wetzel.

14 Q Did she think that was odd?

15 A She thought it was odd that she wasn't allowed to
16 talk to anybody about it. And also that OET funding string
17 was used in the justification instead of a funding string
18 from county administration.

19 Q And on February 26 of 2009, was there a search
20 warrant done on Donald Stapley's office?

21 A Yes, there was.

22 Q And the next day, was Mr. Everett contacted again?

23 A Yes, on the 27th.

24 Q Was he asked to do another sweep?

25 A Yes.

1 Q And was that done?

2 A Yes, it was.

3 Q What day was that done?

4 A On the evening of the 27th.

5 Q And at this point how much was the second sweep?

6 A The second sweep was \$4,600.

7 Q And despite the fact that that was under \$5,000,
8 was there another emergency memorandum created?

9 A Yes, there was.

10 Q Was that also done again by Steven Wetzel?

11 A Yes, it was.

12 Q What was the reason given at this point in time?

13 A The verbiage was it looked like it was cut and
14 pasted. It was exactly the same verbiage identifying a
15 potential security breach at the administration building and
16 the only thing that was different was the date and the
17 amount of 4,600.

18 Q And when did this eventually get paid?

19 A On March 17, 2009.

20 Q Okay. And what was the process for payment for
21 the second bug sweep?

22 A It was the same. It was put on Heather Dickey's
23 credit card using the emergency authorization letter as
24 justification for payment.

25 Q Now, was there a document that was seen through

1 one of the media reports that showed approval by the acting
2 county manager?

3 A Yes.

4 Q And who at the time was the acting county manager?

5 A Sandy Wilson.

6 Q Was there an interview done in June of 2009 of
7 Andrew Kunasek and a James Bloom?

8 A Yes, there was.

9 Q Did Mr. Bloom address who approved the second
10 sweep?

11 A He indicated that it would have had to have been
12 Sandy Wilson.

13 Q Is that consistent with the document that had
14 approval by acting county manager?

15 A Yes, it is.

16 Q In March of 2009, was Thomas Irvine's firm hired
17 to put on some type of seminar?

18 A I believe that was in June.

19 Q Was that in June? Okay, did law enforcement try
20 to interview anybody after the article in the Republic about
21 what had transpired?

22 A Yes.

23 Q And do you remember the date of that?

24 A The first interviews were on the 24th of June.

25 That is when Jim Bloom and Heather Dickey were interviewed.

1 Mr. Wetzel was also contacted, but declined for interview
2 and immediately after that was this news article. And then
3 on the 26th of June.

4 Q Okay. And let's just clarify that was a second
5 news article then about the fact that people were being
6 interviewed?

7 A Yes, ma'am.

8 Q And did it state in that news article Thomas
9 Irvine's firm to be hired to put on some type of seminar?

10 A Yes.

11 Q What was that seminar supposed to have been about?

12 A The seminar was to be what to do if contacted by
13 sheriff's office investigators.

14 Q This was being put on by Thomas Irvine's firm even
15 though it, this would be a criminal investigation?

16 A That's correct.

17 Q Did Mr. Bloom also indicate what the purpose of
18 the bug sweep was?

19 A He indicated that he was told that the employees
20 were scared.

21 Q Did he also indicate that it was for the purpose
22 of looking for law enforcement listening devices?

23 A That's correct.

24 Q And based on what Mr. Bloom stated about employees
25 being scared, did you ask county employees if they were, in

1 fact, scared?

2 A Yes, we did.

3 Q Did any county employees say they were scared of
4 the sheriff's office or even aware that bug sweeps had
5 occurred prior to the news articles?

6 A No to both. Nobody ever reported being scared or
7 intimidated by the sheriff's office and most of the county
8 employees that we talked to didn't even know the sweeps were
9 performed.

10 Q And did Mr. Bloom -- did other people also tell
11 the media that was the reason for the bug sweep?

12 A Yes. Max Wilson told the media that -- he said
13 they feared they were being spied on by county attorney and
14 Sheriff Joe Arpaio.

15 Q And none of the employees that you spoke with
16 stated that; is that correct?

17 A That's correct. Nobody said that.

18 Q Can you tell us who you interviewed, in terms of
19 just general positions and that?

20 A It was everybody that was on the 10th floor that
21 would have had their offices swept, from a relatively low
22 level accounts payable type people to secretaries, clerks,
23 administrative aides, anybody that works on the 10th floor.

24 Q And approximately how many people were actually
25 interviewed?

1 A Just short of 50 people.

2 Q And none of those 50 people had said that they
3 were worried about being spied upon?

4 A No, they did not.

5 Q If the sheriff's office had placed listening
6 devices in the office, you already stated that would be
7 pursuant to court order. What would that be? What would
8 the purpose of that be? Would that be for criminal
9 investigations?

10 A It would be in an ongoing criminal investigation,
11 yes.

12 Q Are you aware, in your investigation of any
13 legitimate county business purpose, in checking for
14 listening devices?

15 A There would not be.

16 Q The stated purpose on the memo was a security
17 breach; is that correct?

18 A That's correct.

19 MS. AUBUCHON: I have no further questions for
20 this witness.

21 MR. BAKER: Any members of the grand jury have any
22 questions for Detective Abrahamson?

23 THE WITNESS: Sir.

24 MR. A little bit mixed up on some
25 dates. I don't think that is a problem. The original court

1 order for the listening devices was when?

2 THE WITNESS: There was no court order for
3 listening devices.

4 MS. AUBUCHON: Maybe I can clarify. Were there
5 any listening devices?

6 THE WITNESS: There were no listening devices.

7 MR. : You mentioned a court order.

8 THE WITNESS: Yes, sir, to explain --

9 MR. There was contact and there had
10 been a court order. Maybe I misunderstood.

11 MS. AUBUCHON: I probably didn't clarify very
12 much. I kind of mixed going back and forth. I understand
13 that. Let me follow up and if you want, if that is clear,
14 great. If not, you can follow up.

15 MR. Continue, if you could, to clarify
16 a little bit.

17 BY MS. AUBUCHON:

18 Q Sure, sure. If law enforcement was doing a
19 listening device, trying to get a listening device on the
20 county, for example, offices, would they have to obtain a
21 court order?

22 A Yes, they would.

23 Q In this particular case were there any listening
24 devices placed in the county administration building?

25 A There were none.

1 Q So there was no court order because no devices
2 existed?

3 A That's correct.

4 MR. My question is what was the
5 criminal investigation, to begin with, that they were
6 worried about? Can you say that? Do you know?

7 THE WITNESS: We don't know.

8 MR. Okay. Last question I think that
9 I have at the moment. Was there a court order for Stapley's
10 house?

11 THE WITNESS: No, there was not.

12 MR. No listening devices placed there?

13 THE WITNESS: No, there was not.

14 MR. Okay.

15 THE WITNESS: That was it.

16 MR. What was the value for the sweep?

17 THE WITNESS: \$10,000.

18 MR. BAKER: If there are no further questions, we
19 thank you, sir.

20 I would remind you that Arizona law prohibits
21 you from discussing your testimony here with anyone other
22 than the prosecution.

23 Please step outside and remain in the
24 vicinity until there are further questions.

25 THE WITNESS: Yes, sir.

1 (Whereupon the witness leaves the grand jury
2 room.)

3 (Whereupon the witness enters the grand jury
4 room.)

5 MR. BAKER: Before you sit down, this young lady
6 will swear you in.

7

8 DAVID HENDERSHOT,

9 (called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:)

11

12 EXAMINATION

13 BY MS. AUBUCHON:

14 Q It's afternoon. Good afternoon.

15 A Oh, yeah, good afternoon.

16 Q Can you introduce yourself to the grand jury,
17 please.

18 A My name is Dave Hendershot, and I am the chief
19 deputy for the Maricopa County Sheriff's Office, and I am in
20 charge of our corruption unit in the sheriff's office that
21 is also occupied by the county attorney's office.

22 Q Can you give us a little bit of background about
23 your training and experience?

24 A I started out my law enforcement career 31 years
25 ago. During that time, I spent the long end share of my

1 career in investigation as a detective, sergeant and
2 lieutenant in our organized crime racketeering unit. After
3 lieutenant, was promoted to captain. Then after captain,
4 deputy chief, then director and then chief deputy in the
5 sheriff's office, and I have been the chief deputy in the
6 sheriff's office since 1999.

7 Q Can you tell us a little bit about this. I think
8 it is called the MACE unit?

9 A The MACE unit is a unit that was formed
10 approximately two-and-a-half, two-and-three-quarters years
11 ago by the county attorney's office and the sheriff's
12 office. That basically takes political corruption
13 complaints from citizens and deals with those complaints as
14 they receive them.

15 Q And does the county attorney's office have a
16 representative that serves in that MACE unit?

17 A Yes, County Attorney Aubuchon is that
18 representative, has been for several years now.

19 Q And can you describe what detectives are in this
20 MACE unit?

21 A We have, over the years depending upon the
22 investigations that we have done and the kind of work that
23 we have had to do, we do something that is basically, for
24 those familiar with management, it is kind of a manpower
25 chunking.

1 We have a core group of about eight
2 detectives that report to two sergeants. And from there,
3 more detectives are needed for specifically, say, doing mass
4 amounts of interviews or something like that. They would be
5 brought in from other areas to assist, to make the
6 investigation go quicker.

7 Q Now, I am going to probably have to skip around a
8 lot, so if you are not following, please let me know.

9 A All right.

10 Q Same with the grand jurors, because a lot of these
11 things overlap. So can you kind of tell us if all of the
12 events occur, first of all, in Maricopa County?

13 A Yes.

14 Q And, okay, who is Gary Donahoe?

15 A Gary Donahoe is a person who is a judge that sits
16 as the criminal presiding judge in Maricopa County.

17 Q And who is David Smith?

18 A David Smith is the county manager for Maricopa
19 County.

20 Q And who is Barbara Mundell?

21 A Barbara Mundell is what is called the presiding
22 judge of Maricopa County, and is kind of like the top judge
23 for the county.

24 Q Now, at some point did the MACE unit and yourself
25 become aware of some questions involving the building of the

1 criminal court tower?

2 A Yes. There was considerable concern back as the
3 economy, when the court towers started, the economy was
4 good. And as the economy had started having a downturn, the
5 board, along with all of the other elected officials had
6 meetings and the meetings were to discuss the cutting of
7 budgets, things like that.

8 And discussed at the meetings was the court
9 tower and that the court tower should not be built, and that
10 there was a particular meeting in --

11 Q Before we get to that particular meeting, let me
12 go back a little bit.

13 A Okay.

14 Q In approximately November of 2006, was Thomas
15 Irvine hired in some capacity to work for the Superior Court
16 on the building of this new court tower?

17 A Yes, he was.

18 Q Okay. And are you aware of how he was hired, what
19 you know, what type of contract was done at that point?

20 A Well, in Maricopa County, for the size of the
21 contract that this would have involved, it would -- in the
22 normal procurement procedure would be is to go out to bid
23 and in this particular case, it did not go out to bid.

24 The county went to the City of Phoenix and
25 they asked the attorney general's office for an opinion that

1 they could pull Mr. Irvine off of an existing list that the
2 City of Phoenix had, that was a prior -- that had been bid
3 earlier.

4 Q And is this because it involved him being hired by
5 the court versus the county?

6 A Yes. And because of the court is allowed to --
7 the court is allowed to go off of that, an existing
8 competitive bid. The thing that concerned us, when we found
9 out that he had been, in fact, hired as a lawyer, not a
10 space planner, was that several years ago I had a meeting
11 with Judge Mundell, where she indicated to me that she had
12 been forced by Don Stapley to hire Tom Irvine, and that was
13 prior to the -- well, that was after the selection, but --

14 Q Okay. Well, let's just try to go back a little
15 bit. November of 2006, Mr. Irvine was hired in some
16 capacity to work on this court tower?

17 A Yes.

18 Q You stated earlier, I believe, that at the time
19 the economy was doing pretty well?

20 A Yes.

21 Q Was he introduced in meetings as the space planner
22 for the court?

23 A Yes.

24 Q Okay. So did all of the county officials and
25 participants think that he was a space planner?

1 A Yes.

2 Q Did that create some questions with people?

3 A In particular, it created questions with the space
4 planners that were, in fact, the space planners, but --

5 Q Were there architects hired for this court tower?

6 A Architects, basically profiled the building based
7 on number of people that have to be on a specific floor and
8 they design the building around it. But there was a lot of
9 questions as to why he was there.

10 Q Okay. So would Mr. Irvine and on some occasions
11 other attorneys in his firm sit in these meetings?

12 A Yes.

13 Q What did Mr. Irvine bill an hour?

14 A About \$340.00 an hour.

15 Q And were these meetings, for example, how much
16 square footage certain agencies might need, is that the type
17 of meetings that were held?

18 A Everything from colors and what kind of -- well,
19 square footage, those kinds of things, but things that
20 architects are primarily at issue with.

21 Q Now, you said you had a conversation with Barbara
22 Mundell. Was she the criminal presiding judge? I am sorry.
23 Was she the presiding judge for Maricopa County?

24 A Yes, she was.

25 Q Do you remember when that conversation occurred?

1 A I think it was shortly after Tom Irvine had been
2 hired as the space planner. And she had a cup of coffee and
3 in the main lobby of the City of Phoenix building, and she
4 had indicated to me that she was -- Mr. Stapley had required
5 that she hire Irvine, Tom Irvine, to be the space planner.

6 Q Were you aware of any prior relationship between
7 Mr. Irvine and Mr. Stapley?

8 A Yes. Mr. Stapley has, for a long period of time,
9 fostered an attorney/client relationship with Mr. Irvine
10 through the county.

11 Q Do you know someone by the name of Conley
12 Wolfswinkel?

13 A Yes.

14 Q Was he an associate of Donald Stapley?

15 A Yes. In our investigation of bribery
16 investigation, Conley Wolfswinkel is a real estate
17 developer, and Conley Wolfswinkel and Don Stapley reached a
18 business agreement in which Don Stapley bought a piece of
19 property from Conley Wolfswinkel, and after he bought the
20 piece of property for Conley Wolfswinkel, Conley Wolfswinkel
21 paid Don Stapley an option fee.

22 And so, in essence, Don Stapley did the
23 buying, but Conley Wolfswinkel paid Mr. Stapley
24 approximately, I believe it was 10 to \$14,000 a month for --
25 I don't remember the exact, but it was about 10 to \$14,000 a

1 month.

2 Q Okay. So there was some type of relationship
3 going on between Stapley and Wolfswinkel. Did Tom Irvine at
4 some point in the past several years, represent Conley
5 Wolfswinkel as well?

6 A Yes and I -- he represented his firm. He
7 represented on a matter, and I am sorry. I can't remember
8 what the matter was, but --

9 Q But there had been some type of attorney/client
10 privilege in the past?

11 A Yes.

12 Q Was there also concern by different county
13 employees that Mr. Irvine's involvement was slowing down the
14 process?

15 A Yes. As a matter of fact, there was a man by the
16 name of Bob Williams who had volunteered to assist with the
17 project and Bob Williams went to David Smith and Bob
18 Williams is the man that was the project manager for the
19 ballpark. What is it, the Chase, Bob, you know, they always
20 change it. They are always changing the name, but our
21 baseball stadium here.

22 And he was also the person that was the
23 design project manager over at the jails. At that time he
24 was involved in services to the county, and he went to David
25 Smith and complained that Mr. Irvine was slowing down the

1 process and that deadlines were starting to be missed, those
2 kinds of things.

3 Q Do you know how much Mr. Irvine and his firm have
4 been paid over the last three years?

5 A We know for sure, that it is in excess of one
6 million dollars. We don't know for what, because in our
7 efforts to obtain records we weren't able to get the records
8 of what he did as a space planner and what has been exposed
9 publicly, all of everything his firm did has been blacked
10 out in his bills.

11 Q What you do know about that criminal court tower,
12 in terms of contract and that? Did you get that information
13 from Channel 15 investigation?

14 A Let's see, Channel 15 did an investigative report
15 and on it they obtained some documents from a public records
16 request that they had obtained some information from the
17 City of Phoenix and showed that Tom Irvine was not, in fact,
18 hired as a space planner. He was hired as an attorney.
19 That that was not known to us at that time.

20 But that, in fact, he was hired as an
21 attorney to advise the court on legal matters.

22 Q But in 2008, late 2008, was it still believed that
23 he was a space planner of some type?

24 A Yes.

25 Q And that is what he was attending meetings under

1 the guise of; is that correct?

2 A Correct.

3 Q In 2008, did the economy start to turn, turn bad,
4 turn poor?

5 A Yeah, yes.

6 Q Okay, was there a meeting then held, I think you
7 alluded to one regarding budgets being cut and people being
8 laid off?

9 A Yes. There was a meeting prior to -- just prior
10 to November 10th, 2008, and in that meeting, it was chaired
11 by Don Stapley -- not Don Stapley, Andy Kunasek.

12 They talked about the spectre of having to
13 lay county employees off, and the people were going to lose
14 their jobs and that they wanted -- they wanted input to, you
15 know, how we could cut the budget, and so from that, there
16 was an analysis done, that, in fact, Maricopa County had a
17 lot of extra money to, you know, that they basically had
18 money to where they did not have to cut employees.

19 And at that meeting, the court tower was
20 brought up and also at that meeting was Treasurer Hoskins,
21 who was at that meeting, that Hoskins told me he was very
22 concerned about the way the court tower was being handled
23 because they were not sharing with him any of the way that
24 the money was being spent.

25 And as the county treasurer, he was very

1 concerned about the way he had been left out of the loop,
2 and was talking about filing a lawsuit against them so that
3 they had to share the information on how they were paying
4 for this court tower.

5 Q What was the cost of the court tower estimated to
6 be?

7 A At the very beginning of the court tower, I
8 believe it was quoted somewhere around 375 million, and then
9 as criticism grew, they started peeling down the costs. I
10 think they finished up at 350 million dollars for the court
11 tower.

12 Q That is the estimate for when it is completed?

13 A Yes.

14 Q Okay. And throughout this time, when they were
15 discussing laying off employees and cutting budgets, was
16 Mr. Irvine's firm continuing to be paid to attend the
17 meetings and that?

18 A Yes.

19 Q Was there cash set aside to pay for this court
20 tower?

21 A There was no cash set aside to pay for the court
22 tower. In essence, the cash was a -- it was a distribution
23 of different projects. And, I mean, the cash was there.

24 Q Well, let me clarify that. Was there cash, either
25 allocated or set aside or something to pay for the court

1 tower versus, say, financing the court tower?

2 A Oh, well, yes.

3 Q Okay, so would that cash have been available to
4 use to pay other county budgets?

5 A Absolutely.

6 Q There was not, for example, a bond that was done?

7 A No.

8 Q Specifically to raise money for the court tower?

9 A No. They were paying cash for the building, and
10 there was cash available, and that was just a -- that was a
11 project sitting there that they wanted to go ahead with.

12 Q Was that the largest county project ever done, to
13 your knowledge?

14 A I believe so. In the meeting that was held just
15 prior to November 10th, there was a great deal of concern
16 mentioned over the court tower being built with the
17 financing being in the position it was, and that county
18 services, if the court tower was built, would have to be
19 greatly reduced to allow for the court tower to be built.

20 Q Were there other projects that were supposed to be
21 completed as well?

22 A Yes. There was a large number of projects that
23 were supposed to be completed. And those projects were
24 basically abandoned, but they didn't abandon the court tower
25 project.

1 Q We had earlier, the grand jurors heard about
2 Sandra Wilson. Can you tell us who she is, in terms of the
3 financial aspect?

4 A Sandra Wilson is the assistant county manager, and
5 she also is in charge -- she reports directly to David
6 Smith, and she is in charge of the office of management and
7 budget.

8 Q Did she ever vocalize to you her concern about
9 going forward with this court tower and the time, economic
10 times that we were having?

11 A Ms. Wilson stated to me, stated to others, that
12 with the economy being the way it was, that the court tower
13 should not be built and that was stated numerous times. And
14 she displayed a great deal of frustration over the fact that
15 they wanted the court tower to continue.

16 Q And throughout 2009, were county budgets actually
17 cut?

18 A Drastically cut.

19 Q Were employees laid off in various departments?

20 A Yes.

21 Q Were other employees required to take furloughs?

22 A Yes, budgets, and the frustrating thing about the
23 budget is the analysis of the budget show that the county
24 had rainy day funds. The county had funds that they did not
25 need. The county did not need to fire those people, and so

1 I believe that they used the downturn in the economy not to
2 use money that they had sitting on the side. They chose to
3 terminate employees.

4 Q But they went forward on the court tower?

5 A They went forward on the court tower.

6 Q Did Mr. Irvine continue to be paid throughout
7 2009?

8 A Yes.

9 Q At some point were his bills transferred from
10 being paid by the court to one of the county departments?

11 A Yes. Actually, it was -- actually, it was three
12 different areas. Mr. Irvine was working for the county, the
13 Board of Supervisors, and they obtained the contract of the
14 City of Phoenix, and he was pulled off of that to do that.
15 Then he -- then was pulled in off of an attorney general's
16 contract to continue doing what he was doing.

17 Q Okay. Well, let me just -- maybe I confused you.

18 A Sorry.

19 Q Mr. Irvine I think you said was being paid by the
20 Superior Court as a space planner?

21 A That is correct.

22 Q At some point did he then become paid out of a
23 different budget?

24 A Yes, at some point they transferred all of his
25 payments to the construction and engineering budget, which

1 makes no sense at all and the construction engineering
2 people were upset about it, because they felt like there had
3 been no plans made in the budget to do that. But they were
4 just saddled with his bills all of a sudden.

5 Q And was that Abe Thomas that was interviewed?

6 A That's correct.

7 Q Was he the project manager?

8 A Yes.

9 Q And did he indicate concern about why he was
10 having to pay these attorneys out of his budget?

11 A Yes, he was very upset about it.

12 Q Did he initially -- was he initially interviewed
13 by the sheriff's office?

14 A I believe he was.

15 Q Was he also interviewed by the media?

16 A Yes. And he was quoted in the media article, I
17 believe, as saying so.

18 Q At some point later on in 2009, did the sheriff's
19 office try to interview him again?

20 A Yes.

21 Q And were they able to do so at that time?

22 A Let me see, I don't have the date. I believe they
23 were, or I believe that point he was -- I don't recall.

24 Q Okay. We will talk about that in a few minutes.

25 Was Donald Stapley indicted or served with an indictment on

1 December 2nd, 2008?

2 A Yes.

3 Q Soon after that I believe it was December 15th,
4 did the board act basically beginning to remove the county
5 attorney as their legal advisor?

6 A Yes.

7 Q Who did they bring in to advise them and actually
8 start representing them on matters?

9 A Tom Irvine and his firm.

10 Q Now, after Mr. Stapley was served with an
11 indictment, did Judge Mundell select a judge, hand select a
12 judge to handle Stapley's prosecution?

13 A Yes.

14 Q And this is the same judge that you said was told
15 by Mr. Stapley to hire Mr. Irvine; is that correct?

16 A That's correct.

17 Q And who did Judge Mundell select to handle
18 Mr. Stapley's prosecution?

19 A Judge Fields.

20 Q Was Judge Fields an active superior court judge at
21 the time?

22 A No. He was retired, and -- I am sorry. I will
23 just answer your question.

24 Q Before that appointment was actually finalized
25 during or known, did you have some contact with court

1 administration with Judge Mundell about possibly being a
2 witness in some of the investigations?

3 A Yes. On the day after the indictment we were
4 getting calls from media about the selection and what the
5 process was in the selection of the judge. And I called
6 Marcus Reinkensmeyer on the telephone and Marcus
7 Reinkensmeyer, who is Judge Mundell's chief of staff for the
8 whole court.

9 And I let him know that television channels
10 were calling us, wanting to know what judicial selection
11 was. Mr. Reinkensmeyer said no judge had been selected and
12 it would go through some kind of a lottery process.

13 I told Mr. Reinkensmeyer that at this time to
14 please let Judge Mundell know that she was going to be a
15 witness in these cases and that he needed to let the judge
16 know that.

17 Q And who is Anna Baca?

18 A Anna Baca was the prior criminal presiding judge
19 that was appointed by Judge Mundell.

20 Q Okay, and did Gary Donahoe then get appointed to
21 that position in January of 2009 when Anna Baca retired?

22 A Yes.

23 Q Okay, when Judge Fields was appointed, did the
24 Superior Court, through Judge Baca, who reported to Judge
25 Mundell, as the criminal presiding judge, did she report to

1 the presiding Judge Mundell?

2 A Yes, she reported to Judge Mundell.

3 Q Did Judge Baca receive some information in
4 November of 2008, that Judge Fields was hostile to the
5 county attorney's office?

6 A She was told by -- I am sorry. I could never
7 remember this.

8 Q Would that be Robin Hoskins?

9 A Yes. She had been told several days earlier that
10 Judge Fields was, in fact, hostile to the county attorney's
11 office and let her know that she felt that there might be an
12 issue.

13 Q Now, was that involving some committee meetings
14 with what was called the veterans court?

15 A Yes.

16 Q And so Judge Baca was personally put on notice
17 about this court employee, there was an issue between Judge
18 Fields and the county attorney's office?

19 A That's correct.

20 Q But Judge Fields was then appointed either by
21 Judge Baca or Judge Mundell?

22 A Yes. We are aware that Judge Mundell called Judge
23 Fields.

24 Q And asked him to take the case?

25 A Yes.

1 Q Did the minute entry show Judge Baca was the one
2 to actually appoint him?

3 A Yes.

4 Q Did the county attorney's office then file
5 documents to have to find out, first of all, why Judge
6 Fields was on this case?

7 A Yes.

8 Q Did they get any response at all?

9 A No.

10 Q Okay. Did they file motions then to try to remove
11 Judge Fields?

12 A Yes.

13 Q And was that based on bias?

14 A Yes.

15 Q At some point did Judge Baca in a hearing indicate
16 that Judge Fields was appointed because the Superior Court
17 thought they had a conflict?

18 A I am sorry. Say that again, Counsel.

19 Q During one of the hearings involving these
20 matters, did Judge Baca state on the record that Judge
21 Fields was appointed because the Superior Court thought they
22 had a conflict in the Stapley prosecution?

23 A Oh, yes, that is correct. She found that there
24 was a conflict with the Superior Court.

25 Q Despite that conflict that Judge Baca stated, did

SUPERIOR COURT

1 Judge Baca continue to hear the State's motion to remove
2 Judge Fields as well as a motion by the defense to remove
3 the county attorney's office?

4 A Yes, under the objection of prosecutor.

5 Q So the fact that the conflict existed, wouldn't
6 allow them, according to Judge Baca, allow Judge Baca to
7 make any decisions of Donald Stapley, but wouldn't prevent
8 them from ruling in the county attorney matters?

9 A Well, besides the fact that Baca said that the
10 court had a conflict in the matter, she continued to hear
11 the motions to throw the county attorney off the case.

12 Q In the midst of all of this criminal case
13 involving Donald Stapley, were there also issues with the
14 civil division of the county attorney's office basically
15 being eliminated?

16 A Yes.

17 Q And, again, was that based on the advice of Thomas
18 Irvine?

19 A Thomas Irvine, in essence, appointed himself to --
20 after he was hired, in essence, appointed himself as the
21 advisor to the board. And so it was advice of Tom Irvine in
22 his own self-appointed capacity.

23 Q Based on all that was going on, did the county
24 attorney, Andrew Thomas, decide that in order to basically
25 try to settle things down he would hand off the prosecution

1 to another county?

2 A Yes.

3 Q Did he hand that off to Yavapai county?

4 A Yes, he did.

5 Q Did he also hand off some other investigations
6 what would be referred to as Stapley, part two,
7 investigation, also Mary Rose Wilcox?

8 A Yes.

9 Q And an investigation of the court tower?

10 A Yes.

11 Q I want to back up again. I know I am jumping
12 around. But on December 12 of 2008, was there a grand jury
13 subpoena served on county administration to get records
14 involving the court tower, the contracts, et cetera?

15 A Yes.

16 Q Was there also public records request done?

17 A Yes. And that was based on all of the
18 irregularities, the concerns that Hoskins has about being
19 kept in the dark. The concern that so many employees were
20 going to have to be terminated from their employment, when
21 it did not appear that there was any need to terminate
22 employees, and so yes.

23 Q Okay, is it your understanding that the grand jury
24 subpoenas are issued as part of an investigation as to
25 whether a crime has actually occurred or whether a person

1 has actually committed a crime?

2 A Yes, it is an investigative tool to see if, in
3 fact, a crime may have been committed.

4 Q Now, there has to be some basis to make a grand
5 jury subpoena request?

6 A Certainly. For example, the concern of Hoskins,
7 because they were keeping information from him relative to
8 how the money was being spent on the court tower, and the
9 displaced rationale of terminating hundreds of employees
10 from employment where there was apparently no need to do so.

11 Q Have you been, to this date, able to investigate
12 what happened with the criminal court tower, in terms of any
13 contracts or deals that have been made?

14 A No. We have been totally shut down by Mr. Irvine
15 and David Smith into performing that, and that's been to
16 this day we haven't been able to get into it to interview
17 anyone.

18 Q Okay, let's go through and talk about that.

19 On December 12 you said grand jury subpoenas
20 were served on county administration?

21 A Yes.

22 Q Who was hired to deal with that grand jury
23 subpoena?

24 A I believe it was --

25 Q Is that Thomas Irvine?

- 1 A Thomas Irvine and --
- 2 Q Edward Novak?
- 3 A Ed Novak. Thank you.
- 4 Q Is he Mr. Irvine's associate?
- 5 A Yes, in the same law firm.
- 6 Q So the county administration received -- let me
- 7 try to clarify this, a grand jury subpoena regarding
- 8 contracts involving the court tower, and they disclosed that
- 9 to one of the targets of the subpoena who would have been
- 10 Thomas Irvine?
- 11 A That's correct.
- 12 Q Mr. Irvine was brought in to try to quash those
- 13 subpoenas?
- 14 A That's correct.
- 15 Q And he filed that with the criminal presiding
- 16 judge, who at the time was Judge Baca; is that right?
- 17 A That's correct.
- 18 Q And did that then become Gary Donahoe?
- 19 A Yes.
- 20 Q Did the state file a request to have that case
- 21 moved out of the county?
- 22 A Yes.
- 23 Q And was that based on the fact that Thomas Irvine
- 24 had a contract with the Superior Court for the criminal
- 25 court tower?

1 A Yes. We had learned at this point that the firm
2 had a contract with that, the firm had -- Mr. Irvine
3 represented the court. Mr. Irvine represented the board,
4 and Mr. Smith. Mr. Irvine's firm even had handled the
5 contractor that won the bid for the court tower.

6 One of the other lawyers in the firm was
7 representing that the company that won the bid to build the
8 court tower was represented by Mr. Irvine's firm as well.

9 Q Okay. So at this point, Mr. Irvine has gone into
10 the criminal court, which is the court tower for the
11 criminal court; is that correct?

12 A That's correct.

13 Q And they go in front of the criminal presiding
14 judge and try to quash the subpoenas, which are seeking
15 information, in part, regarding the court relationship with
16 the attorney; correct?

17 A Well, in essence, Tom Irvine was the Court's
18 attorney. So, in essence, the court was ruling in favor of
19 their own attorney to quash the investigation.

20 Q At that point we just knew that there was a
21 contract, is that correct, for a space planning?

22 A Yes, for space planning. And then it was later
23 learned that he was, in fact, that he was, in fact, working
24 as the attorney for the courts.

25 Q And was Judge Donahoe then the new criminal

1 presiding judge, he -- was he appointed by Judge Mundell?

2 A Yes.

3 Q Was he advised about the contractual relationship
4 between this court, the criminal court and Thomas Irvine and
5 Ed Novak?

6 A Yes.

7 Q And was he also asked to remove Thomas Irvine and
8 Edward Novak from the case because of the fact they were
9 targets of a subpoena?

10 A Yes.

11 Q And did he do that?

12 A No.

13 Q Did he remove himself?

14 A No.

15 Q Did he send it to another county to review?

16 A No.

17 Q Did he remove Mr. Irvine or Mr. Novak?

18 A No.

19 Q Who did he remove from the case?

20 A He removed the county attorney's office.

21 Q Did he find the conflict because of a contractual
22 issue?

23 A No.

24 Q What was the basis of the conflict?

25 A I believe the basis of the conflict was he said

1 that because the county attorney's office provides civil
2 guidance, that the prosecutor could not also prosecute, but
3 there are two separate divisions within the county
4 attorney's office. There is a criminal side and civil side.

5 Q Did the county attorney provide expert opinions as
6 well as examples of say the attorney general's office, who
7 had criminally prosecuted one of the agencies had said they
8 were also providing legal advice to?

9 A Many examples with longstanding -- with
10 longstanding judicial review, that it is fully appropriate
11 for a county attorney on the criminal side to prosecute a
12 county employee for doing a criminal act, and just because
13 the civil -- because the civil division operates
14 independently of the criminal division.

15 Q But despite the fact that Judge Donahoe, knew
16 there was a contractual relationship with his court and the
17 attorneys, he refused to recuse himself and he basically
18 kicked the county attorney off; is that correct?

19 A In essence, yes. He kicked the county attorney
20 off and ruled in favor of his own lawyer.

21 Q And did the county attorney's office seek
22 appellate review?

23 A Yes, they sought appellate review.

24 Q Would any court hear the matter?

25 A No, they didn't want to hear the matter.

1 Q So they never decided on anything?

2 A No.

3 Q Did Judge Donahoe or Thomas Irvine or Edward Novak
4 disclose the fact that there was not just a space planner
5 relationship but an actual attorney/client relationship?

6 A No.

7 Q Okay. After the court of appeals had declined to
8 get involved, was it -- did we become aware there was an
9 attorney/client relationship?

10 A Yes.

11 Q How did that happen?

12 A I believe that came out in a television news
13 story.

14 Q Was that the Channel 15 News investigation?

15 A Yes.

16 Q Even at that point, did Gary Donahoe, Tom Irvine
17 or Ed Novak put anything on the record or come forward
18 saying there was a conflict based on attorney/client
19 relationship?

20 A No.

21 Q Now we discussed earlier that there was a
22 relationship between Donald Stapley and Conley Wolfswinkel?

23 A Yes.

24 Q Was there a civil case involving Conley
25 Wolfswinkel as one of the parties?

1 A Yes. We had become aware of a civil case that
2 Conley Wolfswinkel was involved in, and he was being sued by
3 another party that had nothing to do with Maricopa County.

4 And we had learned that he had taken an
5 affidavit, in that it had been sealed by the court. And at
6 that point I believe counsel went to the court and asked
7 that the record be unsealed.

8 Well, while the investigation was going on at
9 the very same time with the sheriff's office, detectives
10 executed a search warrant on Conley Wolfswinkel's office.

11 In his office we found a copy of this
12 affidavit that apparently reporters had. I want to say it
13 was reporters that had become aware of it, but anyway, we
14 had become aware of this, that he was sworn in, the matter
15 was sealed.

16 But in our service of our search warrant, we
17 discovered the affidavit that more fully disclosed the
18 business relationship and Conley Wolfswinkel and his
19 business actions and how -- what type of relationship he had
20 with Don Stapley and other supervisors from other counties.

21 So at that point, because we had received it
22 in a search warrant, it was no longer necessary for counsel
23 to ask to have the unsolved civil case get a copy of -- make
24 a release of the search warrant.

25 Q So was the notice requesting the copy of this

1 deposition withdrawn?

2 A Yes.

3 Q Did the sheriff's office provide pursuant to
4 records request by the public, a copy of that deposition?

5 A Yes.

6 Q In response, did Mr. Wolfswinkel file a request
7 for sanctions against the county attorney's office?

8 A Yes.

9 Q And --

10 A And I believe also Wade Swanson.

11 Q Well, in addition to Mr. Wolfswinkel filing a
12 request for sanctions, did David Smith arrange for a Wade
13 Swanson to be hired to file a request for personal sanctions
14 against the county attorney's office?

15 A Yes. And why that is so unusual is if you can
16 envision a civil suit going on between two parties that have
17 nothing to do with Maricopa County, and we are doing our
18 criminal investigation. And in this civil suit, Maricopa
19 County, David Smith -- David Smith and the board, use
20 taxpayer dollars to intervene and file sanctions for the
21 county attorney's actions trying to obtain a document in a
22 suit that has absolutely nothing to do with Maricopa County.

23 And so, in other words, to prevent law
24 enforcement from obtaining that document, that we were
25 asking to have be released.

1 Q And did certain people appear at that civil
2 hearing when they were requesting sanctions?

3 A Yes.

4 Q Who was sitting in the back of the room at that
5 time?

6 A Don Stapley, criminal defense attorney, Tom
7 Irvine, and --

8 Q Mr. Wolfswinkel's attorney?

9 A Mr. Wolfswinkel's attorney, yes.

10 Q During that trial court proceeding, did the court
11 enter sanctions against the county attorney's office for the
12 sheriff releasing deposition?

13 A Yes.

14 Q Was that appealed?

15 A Yes, it was overturned.

16 Q The Court of Appeals threw out that order?

17 A That's correct.

18 Q Did they make the finding the county attorney's
19 office has not violated any type of order?

20 A That's correct.

21 Q I want to go back to the grand jury matter just
22 briefly, that Gary Donahoe ruled on. Along with that grand
23 jury subpoena, did Donald Stapley obtain information in his
24 role as a county supervisor that he then provided to his
25 personal criminal defense attorney?

1 A That is correct. He received information that we
2 were seeking, through a grand jury subpoena records, from
3 Maricopa County.

4 Q And did the state file an order to show cause
5 regarding release of grand jury information by Mr. Stapley?

6 A Yes.

7 Q And did Gary Donahoe throw that out, stating that
8 Donald Stapley can use it for whatever personal benefit he
9 wanted?

10 A Yes.

11 Q In regards to the search warrant, you indicated
12 was served on Conley Wolfswinkel's office, was there a
13 motion to controvert filed?

14 A Yes.

15 Q Was that a motion to set aside the search warrant?

16 A It was all aimed of retrieval of the Wolfswinkel
17 deposition.

18 Q Okay. And according to the statutes, is that
19 motion supposed to be filed in front of the judge who issued
20 the search warrant?

21 A Yes.

22 Q And in this particular matter, was it a justice of
23 the peace who issued the search warrant?

24 A It was the presiding justice of the peace, Judge
25 Ore, the head justice of the peace.

1 Q Did Mr. Wolfswinkel's attorney file that motion to
2 controvert in front of Judge Ore?

3 A No. They took it directly to Judge Donahoe, and
4 the unusual thing about that is that Judge Donahoe
5 immediately set -- immediately took the case when, in fact,
6 a controversial issue needs to go before the judge that
7 issued it. But Judge Donahoe took the case, immediately set
8 it for a hearing.

9 Q In fact, he set it for a hearing. He set the
10 hearing the next day; correct?

11 A That is correct.

12 Q He didn't have the hearing the next day but the
13 day after he received --

14 A Yes.

15 Q -- the motion he set it for hearing?

16 A He immediately set it for hearing, which is not at
17 all what normal times would be.

18 Q And this was in a brand new filing, is that
19 correct, it wasn't an on going case?

20 A That is correct.

21 Q Were motions filed informing Judge Donahoe it
22 should have been filed with the justice of the peace?

23 A Yes.

24 Q Did he decide to go ahead with the hearing anyway?

25 A Yes, he did.

1 Q After that hearing, did he eventually decide that
2 the state was right and it needed to go back to the justice
3 of the peace?

4 A Yes.

5 Q Did the justice of the peace eventually hear the
6 matter?

7 A Yes.

8 Q Did he rule in favor of the sheriff's office?

9 A Yes, he did.

10 Q And was a notice of appeal filed by
11 Mr. Wolfswinkel's attorney?

12 A Yes, with Judge Donahoe.

13 Q What typically happens when a notice of appeal is
14 filed by a lower court? Does it go to a lower court of
15 appeals, Judge?

16 A Yes. They have a number of judges that hear
17 appeals and it goes to them, but Judge Donahoe took this
18 appeal on himself.

19 Q So in this particular matter, Judge Donahoe picked
20 up the case and heard the appeal?

21 A Yes.

22 Q And then did he reverse the justice of the peace's
23 decision?

24 A He reversed the justice court, yes.

25 Q There was discussion with Detective Abrahamson

1 about Thomas Irvine's law firm being hired to give advice to
2 employees on how to talk to the sheriff's office. Are you
3 aware of that?

4 A Yes.

5 Q Was that arranged through David Smith's office?

6 A Yes.

7 Q And was that done after interviews began on the
8 bug sweep information?

9 A In essence, what happened was that we read a story
10 in the Republic that was written by Yvonne Wingett, and in
11 the story she wrote that there was a bug sweep done and
12 \$10,000 were spent trying to locate our law enforcement
13 listening devices.

14 And from that, we immediately started an
15 investigation on that day. The following day from the
16 article, I went over and spoke to Yvonne Wingett and JJ
17 Hensley, who are two reporters with the Republic.

18 And the meeting lasted about an hour and
19 basically I let her know that she had uncovered something we
20 were not aware of and the money had been spent trying to
21 locate law enforcement interception devices.

22 And upon leaving that meeting, by the time I
23 had returned to the sheriff's office, Chief Paul Chagolla
24 came into my office and said he had received a call from the
25 reporter JJ Hensley, who told him that Yvonne Wingett,

1 immediately upon my leaving, contacted someone over at
2 Maricopa County, apologizing that her story had basically
3 tipped us off to -- tipped us off to the expenditure of the
4 money and that she was sorry she caused to get the people
5 involved in that investigated.

6 And let's see, and I am not sure how long,
7 several days later there was another -- there was -- we had
8 started to investigate -- we started to investigate -- we
9 got -- we received the documents from an interview with the
10 company that did the bug sweep.

11 This is a legitimate company that does work
12 for the federal and state government in doing counter
13 intervention for any kind of listening devices.

14 Q Would that be Mr. Everett?

15 A That's correct.

16 Q Yeah, we discussed that already.

17 A So he was a legitimate company used by both the
18 state, county, city, federal government and had been doing
19 it for a while.

20 He was cooperative and indicated that he had
21 been contacted and -- see, I lost my train of thought.
22 Where was I going with this?

23 Q At some point you did begin investigation, and at
24 some point in June, actually try to interview county
25 employees?

1 A Yes.

2 Q Is that correct?

3 A We started to interview county employees in
4 mid-week, and one of the first county employees that was
5 interviewed was Jim Bloom.

6 And Jim Bloom gave an interview to our
7 detectives and it was either the very next day, I believe,
8 the very next day or the day after, Yvonne Wingett wrote
9 another story indicating that the county, that we were, in
10 fact, interviewing people involved that had their phones
11 checked and that the reason that the county was saying that
12 reason that they checked for listening devices was because
13 all of these county employees were in fear of some kind of
14 retaliation against the sheriff's office or the detectives
15 that they would take it out on them.

16 But the thing in the article that caused
17 somewhat of an emergency on the investigator's part was that
18 it indicated that on Monday, that Ed Novak from Tom Irvine's
19 firm would be providing advice on how to talk to sheriff's
20 detectives and what their rights were and that kind of
21 stuff.

22 So what the corruption unit did, we brought
23 in a lot of people and we, over the weekend, we interviewed,
24 I believe, 42, 42, 43, I think there were three that weren't
25 available, but we interviewed all of the people who had

1 their phones checked.

2 And not only some of the people had already
3 been that were would say higher in the food chain had
4 already been told to tell if we show up, talk to Ed Novak,
5 who Ed Novak, his firm, Ed Novak, he is a criminal defense
6 lawyer. That is what he does.

7 But they, in fact -- so some of the people
8 said talk to Ed Novak, but nobody was in fear. As a matter
9 of fact, nobody had even known their phones had been
10 checked.

11 And so there was no fear that caused -- so
12 that the statement that employees were in fear and that is
13 why they did this, check for bugs, was not the case. As a
14 matter of fact, the great majority of them didn't know
15 anything about it until they read it in the newspaper.

16 Q Is it your understanding David Smith would have
17 been the one to authorize him to hire him for that purpose?

18 A At that particular time.

19 Q June of 2009?

20 A Well, at that particular time I believe it was
21 Sandy Wilson, David Smith and -- well, he was already
22 working for the board.

23 But -- and Ed Novak was already working
24 because they brought in Ed Novak to basically fight our
25 public records request, because when we got shut down with

1 our grand jury subpoenas, we started making public records
2 requests. And Ed Novak basically was brought in to stop our
3 public records request to try to obtain the documents of the
4 court tower and the contractors and things like that.

5 Q So did David Smith send a letter to the county
6 attorney's office demanding answers about alleged anonymous
7 blogging on the Internet?

8 A Yes.

9 Q Did he state that this allegedly dealt with
10 disclosure of attorney/client information?

11 A Yes.

12 Q And did he eventually file a bar complaint against
13 the deputy county attorneys?

14 A Yes.

15 Q Were the deputy county attorneys, once that were
16 either involved with the MACE unit or --

17 A Yes.

18 Q -- spokespeople for the county attorney's office?

19 A Yes.

20 Q Had they ever represented the civil division and
21 provided legal advice to anybody?

22 A No.

23 Q You stated earlier that Stapley's case went to
24 Yavapai County and some other investigations. You also
25 talked about the purposes of a grand jury subpoena. Did

1 your detectives work with Yavapai County to try to get grand
2 jury subpoenas for records?

3 A Yes.

4 Q Can you explain to the grand jury what happened in
5 that investigation?

6 A When the investigation was first handed over from
7 Yavapai County, pretty much nothing happened for about a
8 month. And at that particular time we had a lot of people
9 in our corruption unit doing a lot of interviews and things
10 like that.

11 And what basically happened is there was
12 when -- to give you an idea when we make a request for grand
13 jury subpoenas, we usually -- the detectives usually get a
14 response back within two days, maybe three at the outside.

15 Where a grand jury subpoena is, in fact,
16 being issued, the grand jury is a common tool that is used,
17 you know, if you have an issue of, well, maybe there was a
18 bribe, so you want to take a look at the person's account.
19 You have a grand jury subpoena. You look in the account to
20 see what had happened, you know, see what was going on.

21 And so when the cases first went up there,
22 literally, for at least two months, for at least it took two
23 months to get three grand jury subpoenas from Yavapai
24 County.

25 And the detectives were quite frustrated and

1 came to me and they didn't understand why they weren't
2 getting any response.

3 One of our detectives made requests on the
4 Mary Rose Wilcox's investigation, and they got no response
5 at all. So there was a great deal of concern that Yavapai
6 County was not following, was not doing their job, I guess
7 would be the best way to put it.

8 Q And Yavapai County Attorney Sheila Polk?

9 A Yes.

10 Q Did she hire the former Yavapai County Mel Bowers
11 to act as a special prosecution for her?

12 A Yes.

13 Q Did Mr. Bowers have about 20 years experience as a
14 Yavapai County Attorney?

15 A Maybe even more than that. For sure I think it
16 might be 24 years, but --

17 Q After meeting with your investigators, did
18 Mr. Bowers believe grand jury subpoenas were necessary and
19 the investigation he was working on on the Stapley matter?

20 A Yes. He had indicated that he wanted grand jury
21 subpoenas relative to airlines. He wanted expanded credit
22 card statements. He wanted to subpoena Maricopa County
23 expense reports. And he also wanted the expense reports for
24 NACo, the National Association of County Organizations,
25 which is the one of the currently indicted charges on

1 Mr. Stapley, is that he asked people for money and basically
2 enriched himself with it and bought things out of his own
3 pocket.

4 Q So based on the relationship Mr. Bowers had now
5 because he was retired Navajo County Attorney?

6 A Yes.

7 Q He was now reporting to Sheila Polk?

8 A Now he is reporting to Sheila Polk. Our
9 investigators immediately sent the request up to Mr. Bowers.
10 We heard nothing for two weeks and then Sergeant Rich
11 Johnson communicated with Mr. Bowers and Mr. Bowers said
12 that Sheila Polk had turned down the request for the
13 subpoenas, which is very strange.

14 Q And did -- at some point your office request that
15 Sheila Polk's office return the investigations to you?

16 A Yes.

17 Q And did she?

18 A The sheriff spoke to the county attorney and
19 basically, you know, had indicated that we thought it was
20 best that investigations come back.

21 Q And, in fact, did Ms. Polk, after that request to
22 return the cases back to you, because from your standpoint,
23 the investigation was not moving forward did Ms. Polk make a
24 public statement to the Arizona Republic criticizing your
25 office and the county attorney's office?

1 A Yes.

2 Q Did she do it at the time when she still had the
3 existing Stapley case and Judge Fields throwing the
4 statements out?

5 A She did it at the same time, when a number of
6 defense lawyers were basically timed to all come out on the
7 same day that defense lawyers were also saying this
8 investigation was an attack on the bench of some type.

9 Q Okay. Did -- once the cases came back, did you
10 meet again with the Maricopa County Attorney's office?

11 A Yes.

12 Q And did the Maricopa County Attorney's office try
13 to obtain special prosecutions to handle all of the cases?

14 A Yes.

15 Q And under the statute, does the county attorney
16 select the special prosecutor and then receive board
17 approval?

18 A Yes. The board approval is a ministerial act, and
19 the county attorney selects a special prosecutor. That was
20 the county attorney's attempt to basically show impartiality
21 that they would get a different prosecutor to prosecute the
22 case.

23 Q Did the board refuse to put that on the agenda?

24 A Yes.

25 Q And did David Smith obtain a legal opinion from

1 his lawyer, Wade Swanson, that it wasn't done properly, the
2 request wasn't made properly?

3 A Yes.

4 Q Did he, in fact, use an old attorney general
5 opinion for that?

6 A Yes.

7 Q So as a result, basically the board has refused to
8 approve any special prosecutors and also maintain that
9 county attorney's office do not investigate them; is that
10 correct?

11 A That's correct.

12 Q Okay. Based on that, did the board recently hire
13 Mr. Irvine again to file what was called a notice regarding
14 the special prosecutors?

15 A Yes.

16 Q And was that entitled in regarding all grand jury
17 proceedings?

18 A Yes. The interesting thing about the filing was
19 that if you read the filing, it specifically talked at the
20 beginning about the special prosecutor, but in the motion
21 itself it was asking and would have been, in essence, a
22 total preventing of any Maricopa County deputy county
23 attorney or the county attorney's office, ever investigating
24 anyone in Maricopa County for a crime.

25 Q Now, was this filed as like a civil injunction or

1 anything like that or was it just filed as a notice?

2 A You know, I believe it was a notice.

3 Q Okay. And this notice, which claimed to be
4 regarding special prosecutors who did they file that with?

5 A Now what?

6 Q Who did they file that with?

7 A Judge Donahoe.

8 Q So they filed that with Gary Donahoe?

9 A Yes.

10 Q Did the state again request, first of all, to
11 strike that notice?

12 A Yes.

13 Q And was that based on the fact that it didn't
14 state a cause of action and was not appropriate as basically
15 a general injunction?

16 A Yes.

17 Q Did Gary Donahoe rule on that motion?

18 A Yes, he did.

19 Q I don't believe he ruled on it. Somebody ruled on
20 it at another point; correct?

21 A I am sorry?

22 Q Gary Donahoe did not rule on that, correct, but he
23 did set a hearing?

24 A He set the hearing, and I believe -- I am sorry.

25 I don't remember the other judge.

1 Q Okay.

2 A That's right. He said the hearing and then judge.

3 Q Okay, here. Let me walk you through it?

4 A Sorry.

5 Q There was a notice to strike or request to strike
6 this notice; correct?

7 A That's correct.

8 Q And Judge Donahoe set an actual hearing on the
9 matter?

10 A That's correct.

11 Q With, again, Thomas Irvine appearing, too?

12 A Yes.

13 Q To try to get rid of the county attorney's office
14 and any other special prosecutors?

15 A Sure. And, of course, the concern is by him
16 setting the hearing to hear the matter in front of his own
17 lawyer, again --

18 Q Was the motion filed to assign an out-of-county
19 judge?

20 A By the county attorney's office, yes.

21 Q Yes. And was Donahoe, Judge Donahoe still going
22 forward with the hearing?

23 A Yes, he was.

24 Q Eventually was that reassigned to another judge?

25 A Yes, it was.

1 Q Did that judge grant the State's motion to strike?

2 A Yes.

3 Q And did that judge question why this was filed in
4 front of the criminal presiding judge?

5 A Yes, because it already had been determined that
6 the courts had a conflict.

7 Q Okay. But he stated in his order that it was --
8 it should have been filed, say, in a civil court as an
9 injunction or some other type of action?

10 A Yes.

11 Q Okay. And, again, that was Thomas Irvine being
12 hired by county administration through David Smith again?

13 A Yes.

14 Q Okay. Was also that motion intended to basically
15 try to any pending or future grand jury panels, it was
16 entitled in regard to all grand jury matters?

17 A Yes. It would have basically potentially brought
18 to light everything in front of the grand jury.

19 Q Even though it was publicized and entitled in
20 regarding special prosecutors, it was to remove the county
21 attorneys in any further investigation?

22 A Totally from doing anything in the future or to
23 find out anything that was going on at the time.

24 Q Involving any county employees or officials?

25 A Yes.

1 Q Who is Tim Casey?

2 A Tim Casey is an outside lawyer that works by
3 county contract.

4 Q Okay. And can you tell us who Richard Stewart is?

5 A Richard Stewart is an attorney who was hired by
6 David Smith and the board of supervisors to be what is, in
7 essence, what started out being with the -- what they would
8 call a conflict counsel, and then they changed the name to
9 conflict counsel, slash, independent administrator.

10 And the difference there being an independent
11 administrator. If you look at, I believe, their theory that
12 by calling them an independent administrator, if he violated
13 bar rules that theoretically they would say, well, I am not
14 acting as an attorney.

15 But the fact of the matter is, Richard
16 Stewart acted as an attorney and all of the attorneys that
17 work for him was an attorney.

18 Q So did Richard Stewart report directly to David
19 Smith?

20 A Yes.

21 Q It was basically in-house counsel reporting to
22 David Smith?

23 A Yes.

24 Q Did Richard Stewart contact Mr. Casey about being
25 appointed on one case that involved the sheriff's office

1 request for an outside lawyer to basically sue the board?

2 A It was specifically we had been going through a
3 series of lawsuits against the board, over their -- one to
4 file to obtain public records that we cannot get in the
5 court, and several others. And we had -- we had had a great
6 deal of difficulty getting lawyers assigned.

7 Richard Stewart, it was obvious to us that
8 Richard Stewart was not, in fact, operating as conflict
9 counsel, meaning that conflict counsel would be someone that
10 would, in fact, be our counsel and assist us in getting a
11 lawyer for our matters, but, in fact, the work for -- he
12 worked for David Smith.

13 We then notified Richard Stewart, based on a
14 series of facts that we had that we had come on that we were
15 going to file a civil suit against Stewart, David Smith, the
16 board of supervisors, for, in fact, robbing us of our
17 attorney/client privilege in keeping -- trying to manage our
18 litigation.

19 And an example of this is where they were not
20 lawyers for Maricopa County, David Smith and the board would
21 get paid, but they held up Shelby Scharback in Maricopa
22 County actually told one of our employees that she was
23 specifically told to hold all payments to Ogletree Deakins.
24 That was a law firm that was handling four of our lawsuits,
25 and not pay them.

1 So our lawyers weren't getting paid. And
2 which is very concerning when you are in a lawsuit, that
3 their lawyers were getting paid, but according to Shelby
4 Scharback she, in fact, had been told specifically not to
5 pay our attorneys.

6 Q So did Mr. Casey speak with Mr. Stewart about this
7 conflict counsel, decide if you got an attorney or who you
8 got attorneys for this lawsuit?

9 A Yes.

10 Q And did he say anything about his conversation
11 with Mr. Stewart?

12 A I will just read page three of his affidavit, and
13 it says in that Stewart, Smith were both concerned. This is
14 Stewart speaking to Casey and Casey writing his affidavit.
15 What Stewart said, and that Stewart and Smith were both
16 concerned that Mr. Bowers of Ogletree Deakins, that I
17 mentioned earlier, may not be providing Arpaio and the MCSO
18 with good legal advice regarding the merits of proceedings
19 with the pending litigation against the board, and
20 therefore, Stewart and Smith needed more control over the
21 selection of attorneys for Arpaio and the MCSO.

22 And Stewart and Smith wanted someone that
23 could say no to the request of Arpaio and the MCSO.

24 Q What was the date of that affidavit?

25 A December 17, 2009.

1 Q And did he indicate when that conversation
2 occurred?

3 A September 10, 2009.

4 Q And then I have one more question. Going back
5 again. I am sorry for jumping back, but when we were
6 talking about Gary Donahoe ruling on the grand jury matter
7 and the Donald Stapley order to show cause, did Donald
8 Stapley's criminal defense attorney learn of a ruling by the
9 court before anybody else did?

10 A Yes. The issue was between the county and the
11 county attorney's office and the ruling like Don Stapley's
12 criminal lawyer informed the County Attorney's office, even
13 before it had been published, that ruling was out.

14 So we know there had been communication back
15 and forth between the court and Mr. Stapley's criminal
16 defense attorney.

17 MS. AUBUCHON: Okay. I have no further questions
18 for this witness.

19 MR. BAKER: Do any members of the grand jury have
20 any questions? If there are no other --

21 MR. I have a question. No.

22 THE WITNESS: Thank you all very much.

23 MR. I have one general question. On
24 the courthouse complex, is there any federal money involved
25 in the courthouse project, more than \$10,000?

1 THE WITNESS: Let me understand your question.

2 MR. Is there any federal money
3 involved in the courthouse project, any which way?

4 THE WITNESS: No, I don't believe -- I don't
5 believe so. It was all county money.

6 MR. Completely county money?

7 THE WITNESS: Completely county money.

8 MR. I am very mixed up on dates. I
9 don't know. You jumped so much, I don't know what happened
10 when. But see if I have another question. Space planner,
11 Mr. Irvine, Irvine I guess his name is. That is what his
12 job title was to begin with?

13 THE WITNESS: That is what everyone was told he
14 was. And space planner, which is a concern to the
15 architects because that is what they do, the architect.

16 MR. Once the building was started and
17 the space planner technically is no longer needed to build,
18 so his services are no longer needed at that point; are
19 they?

20 THE WITNESS: Yeah. I would agree with you, sir.

21 MR. Then he could be hired again as an
22 attorney for other purposes by the county.

23 THE WITNESS: The --

24 MR. There is no reason he couldn't be
25 hired in some other capacity.

1 THE WITNESS: The issue being the court continued
2 to pay him that, we discovered, to pay him all along as an
3 attorney, as an attorney.

4 MR. Well, he is the space planner.

5 THE WITNESS: They said he was a space planner,
6 but he was paid and his firm was paid as an attorney.

7 MR. How much is this whole project worth?

8 THE WITNESS: I am sorry?

9 MR. How much is this whole towers worth?
10 How much is it going to cost?

11 THE WITNESS: The best figure that I can probably
12 use about 350 million dollars.

13 MR. So regard to Mr. Irvine's firm, what
14 contracts are with his firm that would dictate his statement
15 of work?

16 THE WITNESS: Sir, I am sorry.

17 MR. : There has to be contracts in place with
18 Mr. Irvine.

19 THE WITNESS: Yes.

20 MR. What are his -- what is his requirement
21 of services in those contracts?

22 THE WITNESS: That he provide legal advice as an
23 attorney. Only they put out that he was a space planner,
24 and that he was not acting as the court attorney. But he
25 was acting as the court attorney.

1 MS. You said that Mr. Irvine already he
2 was saying it was space planners. You already had space
3 planners. They were hired to do that specifically.

4 THE WITNESS: Yes. Barbara Mundell, in my meeting
5 with her, said she was, in essence, she was told to hire
6 Mr. Irvine by Mr. Stapley.

7 MR. Actually, I don't have --

8 MR. So in regard to Mr. Irvine's contract,
9 you said they stated he was a space planner. Is this as a
10 result of comments from Channel 15 or is this --

11 THE WITNESS: No. This was as a result of the
12 meetings that he -- all of the meetings he attended and they
13 were told that he was hired as a space planner. People at
14 the meetings were told that.

15 MR. : That is documented in meeting minutes
16 and notes?

17 THE WITNESS: Yes, they stated that.

18 MR. Okay. That is what I have.

19 MS. The best thing Mr. Irvine is brought
20 in at any point anything is needing to have to be an
21 attorney Mr. Irvine is brought in, in different capacities.

22 THE WITNESS: Mr. Irvine was. Mr. Irvine
23 represented the board, represented Smith and county
24 management, represented the court. Mr. Irvine's firm
25 represented the company that won the contract to build the

1 court tower. Mr. Irvine is even, in essence, from what we
2 discovered from the person that did the bug sweep,
3 Mr. Irvine negotiated a personal contract about the bug
4 sweep company for Don Stapley's house, and the gentlemen
5 that did the bug sweep did not even know that it was a
6 potential law enforcement bug he was looking for until the
7 gentlemen who owned the company spoke with Mrs. Stapley and
8 Mrs. Stapley told him, well, we are looking for a possible
9 listening devices on our phone and stuff from the sheriff's
10 office.

11 And so when the gentlemen that did the
12 company informed him if, in fact, I do find law enforcement
13 listening devices, I won't tell you and I will tell the law
14 enforcement agency that, you know, that you have hired me.

15 And so at that point things broke down. So
16 Irvine was even acting as Stapley's own personal attorney as
17 well.

18 MR. Is there a federal investigation
19 involved dealing with this at all?

20 THE WITNESS: I have --

21 MS. AUBUCHON: It is probably better that you not
22 answer that.

23 MR. If there is federal money involved
24 it should be a federal investigation.

25 THE WITNESS: Let me -- I can say that -- I can

1 say that there is a tax issue, that I can say that there is
2 a tax issue with Mr. Stapley that we are investigating on a
3 state level, because we have -- we have the authority to
4 look at that as well.

5 And, Counsel, I am not sure if I can disclose
6 what --

7 MS. AUBUCHON: I wouldn't, other than I think it
8 is safe to say you have asked the F.B.I. to investigate as
9 well.

10 THE WITNESS: The IRS, the IRS and we have --

11 MS. AUBUCHON: Have you also asked the F.B.I. to
12 get involved in this investigation?

13 THE WITNESS: Oh, yes, but based on what we
14 learned, we also probably eight months ago, requested the
15 Internal Revenue Service and understand what IRS is kind of
16 a one way thing, we keep giving them information and they,
17 in fact, are working their end of it.

18 They don't supply us information. We supply
19 them and they are working it as it relates to any tax
20 evasion issues of these people, yes, sir.

21 MR. Is there any allegation of any of
22 the judges or anybody else personally benefiting financially
23 from any of these transactions or just Mr. Irvine is the big
24 winner in this situation?

25 THE WITNESS: Sure. And when you are looking at

1 benefit, because we keep in mind, we never got to finish our
2 investigation of the court tower. We were stopped from our
3 investigation of the court tower.

4 And so what this is about is the stopping of
5 our investigation. So to answer that question, the benefit
6 gleaned, okay, was the stopping of our investigation. So
7 our investigation was stalled by these actions.

8 MS. AUBUCHON: And the benefit to the court was
9 the court tower; is that correct?

10 THE WITNESS: The benefit of the court was not
11 only the court tower, but the stopping of the investigation
12 that involved some of the judges.

13 MR. That wasn't really my question.
14 Was judge -- did Judge Donahoe benefit financially, some of
15 the other people, Mr. Stapley, is he going to benefit
16 financially from the court tower being built?

17 THE WITNESS: You see, you are asking me a
18 question about an investigation that we were stopped from
19 doing.

20 MR. Okay.

21 THE WITNESS: So the answer to that --

22 MR. So far you don't have any proof
23 that either one of them personally benefited financially?

24 THE WITNESS: What the benefit is our
25 investigation was stopped. Yes, ma'am.

1 MS. I have one other question. One of
2 the eleven counts -- no, actually two of the eleven counts
3 is theft. And I am not exactly sure where that fits in.

4 MR. That is what I am trying to figure
5 in.

6 BY MS. AUBUCHON:

7 Q Maybe I can ask a few questions. The money
8 expended for the bug sweeps, were there two different
9 expenditures?

10 A \$10,000 expenditure, it was approved by
11 Mr. Kunasek and \$4,000 expenditure and possibly more, but we
12 don't know. But we know for sure they were expended and, in
13 essence, to see if we were listening to them and, you
14 know --

15 Q Those were public monies expended?

16 A Those are public monies, yes.

17 MR. I guess I am -- the fact that you said
18 is that stopping of this investigation is the purpose of
19 this is kind of nice to hear, because this is so confusing,
20 the presentation of it.

21 Frankly, is just -- I feel like we are
22 getting bombarded all day, the end of the day, let's hurry
23 and vote. That is a little frustrating to me as a member of
24 the grand jury. And that is no insult to you at all, but
25 this is very confusing.

1 This is dates going back and forth. I mean,
2 I would like to compartmentalize some of these allegations.
3 I don't know where they are stemming -- what is tied to
4 what. I mean, Mike, maybe you can -- this is --

5 MS. AUBUCHON: No, I apologize. It's been
6 confusing to you.

7 That is why we are here. He can answer any
8 questions you have. A lot of this stuff does overlap. It
9 goes back and forth. There are things that are going on at
10 the same time.

11 The Stapley prosecution is going on at the
12 same time as the deposition that is going on as the grand
13 jury matter. So if there are questions, you know, he is
14 here to answer and take whatever time we need.

15 MR. How does Yavapai county fit in?
16 It seems like, as to the whole different ball game, how does
17 that fit into this particular court tower?

18 MS. AUBUCHON: I think the point is when the
19 Donahoe kicked the county off the investigation of the court
20 tower, it was given to the Yavapai County to assist in the
21 investigation.

22 MR. How was that ruled?

23 MS. AUBUCHON: According to the sheriff's office,
24 they refused to issue subpoenas, anything related to the
25 court tower.

1 MR. It was ruled in Yavapai County or
2 what happened in Yavapai County.

3 THE WITNESS: In Yavapai County pretty much
4 everything kind of slowed to a trickle, and we couldn't get
5 any basic grand jury subpoenas out of Yavapai County.

6 MS. AUBUCHON: Just to clarify, an investigation,
7 correct, there was no case in front of a court in Yavapai
8 County.

9 MR. There was a grand jury out there
10 though, grand jury -- county grand jury?

11 MS. AUBUCHON: There were no grand jury subpoenas
12 requested on the court tower. They weren't issued.

13 MR. There was a grand jury in Yavapai
14 presented to the grand jury in Yavapai.

15 THE WITNESS: No. Dennis McGrane issued three
16 grand jury subpoenas. After two-and-a-half months, there
17 were some basic subpoenas regarding Don Stapley's bank
18 account records.

19 And then no subpoenas were issued for Mary
20 Rose Wilcox. No subpoenas were issued for the court tower.
21 It was -- it was coming out pretty slow from there.

22 MR. I am wondering if we take a few minute
23 break, and then have the chance to meet as a grand jury just
24 for a few minutes.

25 MS. AUBUCHON: Sure.

1 MR. BAKER: If you need a break, certainly.

2 (Whereupon a recess was taken.)

3 MR. BAKER: Before we leave the room, Deputy
4 Hendershot, the county attorney prevents you from talking to
5 anybody else about the case.

6 THE WITNESS: Yes, Counsel.

7 (Whereupon a recess was taken.)

8 MR. BAKER: Okay. We are back on the record on
9 494 GJ 156.

10 Deputy Hendershot, I am reminding you, you
11 are still under oath. Any members of the grand jury have
12 any further factual questions for Detective Hendershot after
13 the break?

14 If there are no further factual questions, I
15 thank you, sir.

16 Again, I would remind you Arizona law
17 prohibits you from discussing your testimony here today with
18 anyone other than the prosecution.

19 Please step outside and remain in the
20 vicinity in case of further questions.

21 THE WITNESS: Thank you very much.

22 (Whereupon the witness leaves the grand jury
23 room.)

24 MR. BAKER: At this time are there any legal
25 questions?

1 MR. I have a question. Why are we
2 handling this case at all? Why isn't it sent to another
3 county? There are conflicts between everybody and everyone.

4 MS. AUBUCHON: Well, the only --

5 MR. Or to states --

6 MS. AUBUCHON: The only criminal -- there has
7 been --

8 MR. -- grand jury? I am sorry,
9 federal grand jury?

10 MS. AUBUCHON: Well, this is a state case. There
11 has been one ruling by a criminal court judge. He found
12 there was no conflict. That was on the Stapley matter.

13 MR. How about the other ones?

14 MS. AUBUCHON: I am not --

15 MR. The court tower.

16 MS. AUBUCHON: There has been no other court
17 proceedings on the court tower.

18 MR. Well, it already has gone to
19 Yavapai County.

20 MS. AUBUCHON: Yavapai County received the
21 investigation to look at -- they never, according to the
22 sheriff's officer, did an investigation. There were no
23 grand jurors involved. It was just with the county
24 attorney.

25 MR. The county attorney said what?

1 MS. AUBUCHON: The sheriff's office had asked for
2 investigation back, since nothing was done.

3 MR. They didn't say for or against.
4 They said we are not going to handle it.

5 MR. Has anybody requested to bear witness
6 to us at all? I know we had one case where a person that
7 was accused requested that they come in front of us.

8 MS. AUBUCHON: He have -- we have not received a
9 request to appear in front of the grand jury. No, we
10 haven't.

11 MS. Am I right in concluding that every
12 time some progress was made, somebody stepped in and said
13 you can't do that and then it was sent back?

14 I am trying to make it simple. You go to
15 court. You say you can't do that. So then you start from
16 square one again. It appears that the county has had
17 trouble getting anywhere on this because every time they put
18 evidence forth somebody squishes --

19 MS. AUBUCHON: That is the allegation and that is
20 what Chief Hendershot was referring to. This is not about
21 any underlying corruption on the building.

22 This is about investigation, is about the
23 prevention of getting into whether or not there was any
24 corruption on the court tower. It is the cover up.

25 MR. Again, there is conflict. Why

1 would they not go to another county and give the grand jury
2 to rather than -- this is such a conflict between --

3 MS. AUBUCHON: Whether there is a conflict or not,
4 sir, it is up to a judge to determine and that has not
5 happened in this case.

6 MR. I only have one question I struggled
7 with. I may not be able to answer it, is they asked for
8 records on the court tower.

9 I didn't quite grasp and whether they ever
10 got the records or the records, in terms of public
11 disbursement. That is public records. It is public
12 contract. I mean, was that stuff available?

13 MS. AUBUCHON: We should bring him back in. I
14 will follow up with him on that issue.

15 (Whereupon the witness enters the grand jury
16 room.)

17 MS. AUBUCHON: Deputy, reminding you, you are
18 still under oath.

19 THE WITNESS: Yes, Counsel.

20 MS. AUBUCHON: Were there attempts to make public
21 records request for different documents?

22 THE WITNESS: Numerous, numerous, we ultimately
23 had to file.

24 BY MS. AUBUCHON:

25 Q In response, were there policies adopted by the
SUPERIOR COURT

1 county dealing with public records request?

2 A That is David Smith submitted a policy that said
3 in order to get a public record law is a state law.

4 And in order to get a public record, anybody
5 can ask for a public record. David Smith brought before the
6 board a new policy that basically said that anyone in the
7 county couldn't ask for a public record unless we submitted
8 for the public record what the purpose of the public record
9 was. In other words, why we wanted it.

10 So, in essence, you could ask for the public
11 record because you are not a member of the county, but if we
12 ask for it, we had to go through a procedure to get approval
13 of the board to ask for that public record.

14 So basically it was a roadblock for us to
15 obtain records by public record and then there was a
16 mediation portion of that, I believe, attached later in
17 another policy that said if we wanted to sue over something
18 that we had to agree to mediate with them. So we, in
19 essence, if we wanted to sue them because they didn't give
20 us a public record, we would have to mediate first, which is
21 a long involved process.

22 BY MS. AUBUCHON:

23 Q Okay. There were a couple of questions about
24 conflict I want to clarify. And the only actual criminal
25 matter that was filed regarding Donald Stapley was there a

1 decision by Judge Fields that county attorney's office did
2 not have a conflict?

3 A That's correct.

4 Q So the only other conflict that was found by any,
5 I guess, criminal court could have been Gary Donahoe in the
6 court tower matter?

7 A That's correct.

8 Q Yavapai County, nothing ever went before any court
9 in Yavapai County or in front of a grand jury?

10 A No. They were just subpoenas issued by the chief
11 deputy.

12 Q But that was the Stapley matter?

13 A That was Stapley.

14 Q Were there subpoenas or grand jury proceedings in
15 the court matter in Yavapai County?

16 A No, no.

17 MR. One other question is sheriff's office
18 attempted to acquire these public records through this
19 process David Smith implemented.

20 THE WITNESS: We have actually -- we made the
21 request, and along the way, we have actually now filed a
22 lawsuit to get them to comply, because they weren't
23 complying.

24 And so we have an open litigation with them
25 over the public records, because our investigation was shut

1 down on the criminal side, and so we went through the public
2 route to get those records.

3 And so that was, in essence, what Mr. Novak
4 was brought in for was to fight us on the public side and
5 Mr. Novak is also in Tom Irvine's firm.

6 BY MS. AUBUCHON:

7 Q Did you try to interview county employees
8 recently?

9 A Yes.

10 Q Were they told it -- did they tell you they were
11 not supposed to the talk to you?

12 A Yes.

13 Q And did, in fact, Tom Irvine's firm call and you
14 said any interviews had to go through them?

15 A That's correct.

16 MR. Is Mr. Irvine's law firm, is it a
17 big law firm or scale thing or --

18 THE WITNESS: It is a very large --

19 MR. So he would have.

20 THE WITNESS: It is a national firm.

21 MR. One last mini-question.

22 Mr. Bowers, I got lost on him. Who is he and what was that
23 all about?

24 THE WITNESS: Mr. Bowers was the retired Navajo
25 County, Navajo County Attorney.

1 MR. Is he requested by you or who
2 requested him?

3 THE WITNESS: That is a great question. When the
4 Yavapai County Attorney's office received the case, Yavapai
5 County appointed him to do the prosecution. He was the
6 Navajo County attorney, but he was retired. So he was the
7 county attorney, but he was very knowledgeable, as far as --

8 MR. Is he a special prosecutor?

9 THE WITNESS: Well, he worked directly for Sheila
10 Polk. He still had to. In other words, she made him, not
11 what we would call a special prosecutor.

12 She made him a Yavapai County deputy county
13 attorney that reports to her. So she did not give up her
14 authority and control over these matters.

15 MR. And he was hired by her or
16 requested by her to investigate what and what date? I mean,
17 I lost you on dates.

18 THE WITNESS: He was given the Stapley, what we
19 commonly refer to as the Stapley one investigation. And
20 then he had started to look into, and that is the -- we had
21 talked about specific subpoenas that he wanted to get --
22 boy, I am getting old.

23 Specific subpoenas that we wanted to get
24 relative to Mr. Stapley's airlines, we wanted an expanded
25 credit card statement, and the Maricopa County expense

1 report for Don Stapley's travel and the NACo expense report
2 from NACo.

3 MR. Was he stymied? You couldn't get
4 subpoenaed for that? What reason?

5 THE WITNESS: Well, he -- the reason is because in
6 the course of the Stapley two investigation, these would be
7 very important to show -- these would be very important to
8 show that the monies that he received from people that
9 contributed to his NACo campaign, that he, in fact, took a
10 large sum of that money and transferred it to his personal
11 account, and --

12 MS. AUBUCHON: Was Mr. Bowers ever able to get
13 those subpoenas.

14 THE WITNESS: No. Mr. Bowers, two weeks later, it
15 was Sergeant Johnson in our corruption unit was told by
16 Mr. Bowers that the county attorney didn't want to issue any
17 more subpoenas.

18 MR. The county attorney.

19 THE WITNESS: Sheila Polk, which was --

20 MR. So in other words --

21 THE WITNESS: Mr. Bowers' statement says, look, I
22 am not the county attorney anymore. She is.

23 MR. Basically she --

24 THE WITNESS: She made that call.

25 MR. She didn't get any subpoenas for

1 anything?

2 THE WITNESS: No. And I might add, when it did
3 come back, when the cases did come back to Maricopa County,
4 I believe within the first week of it being back, 46
5 subpoenas were issued within the week for all of these
6 records and things.

7 MR. BAKER: If there are no further factual
8 questions, again, I thank you, sir.

9 Again, I remind you Arizona law prohibits you
10 from discussing your testimony here today with anyone other
11 than the prosecution. I ask you step outside and remain in
12 the vicinity in case there are other questions.

13 (Whereupon the witness leaves the grand jury
14 room.)

15 MR. Now have we gone back through a lot of
16 facts? Can we read the indictment and --

17 MR. Thank you.

18 MR. BAKER: Again, the allegations are laid out in
19 eleven proposed counts.

20 MR. Okay.

21 MR. BAKER: First is theft. You want me to give
22 you the details within each allegation first or do you want
23 me to go through the proposed counts and then come back with
24 the --

25 MR. Maybe theft the initials of those who

1 each allegation we can go.

2 MR. BAKER: As opposed to Count 1, Mr. Steven
3 Wetzel, Mr. Andrew Kunasek, it is alleged those events
4 occurred on or about between December 2nd, 2008 and
5 January 8th, 2009.

6 MR. Steve Wetzel and --

7 MR. BAKER: Andrew Kunasek. Alleged Count two,
8 also theft. That is as to Mr. Steven Wetzel, and Ms. Sandra
9 Wilson.

10 The allegation there, on or between
11 February 27, 2009, and March 7, 2009, the alleged Count 3,
12 violation of duties and liabilities of custodian of public
13 monies. That is as to Mr. Steven Wetzel and Mr. Andrew
14 Kunasek again.

15 And that is on or between December 2nd, 2008
16 and January 29th, 2009.

17 Alleged Count 4 is another allegation of
18 violation of duties and liabilities of custodian of public
19 monies. That is as to Mr. Steven Wetzel and Ms. Sandra
20 Wilson.

21 The allegations of those are between
22 February 27, 2009 and March 7, 2009, the allegations in
23 Count 5, tampering with a public record, that is as to
24 Mr. Steven Wetzel. That is on or about, between December
25 2nd, 2008 and January 29th, 2009.

1 Six is another allegation of tampering with a
2 public record. Again as to Mr. Steven Wetzel, on or between
3 February 27, 2009 and March 17, 2009.

4 Seven is conspiracy to commit hindering
5 prosecution, or obstructing criminal investigations. That
6 is as to Mr. Gary Donahoe, Mr. Thomas Irvine and Mr. David
7 Smith.

8 It is alleged those occurred on or between
9 December 2nd, 2008 and December 15, 2009.

10 MR. Donahoe.

11 MR. BAKER: Thomas Irvine and David Smith.

12 MR. Conspiracy to --

13 MR. BAKER: Commit hindering prosecution or
14 obstructing criminal investigation. And, again, Gary
15 Donahoe, Thomas Irvine, David Smith.

16 The allegation of Count 8 is obstructing
17 criminal investigations. That is as to the same
18 individuals, Gary Donahoe, Thomas Irvine, David Smith.

19 It is alleged those events occurred on or
20 between December 2nd, 2008, December 15, 2009.

21 The allegation of Count 10, or excuse me,
22 Count 9, hindering prosecution, again, Gary Donahoe, Thomas
23 Irvine and David Smith, alleged that those events occurred
24 on or between December 1st, 2008 and December 15, 2009.

25 The allegation in the counts proposed, Count

1 10 is bribery of a public servant. That is as to Mr. Gary
2 Donahoe. And the allegation is that that matter occurred on
3 or between December 1st, 2008 and December 15, 2009.

4 And, finally, the allegation in Count 11 is
5 participating in a criminal syndicate. That is as to
6 Mr. Gary Donahoe, Mr. Thomas Irvine and Mr. David Smith.

7 It is alleged those events occurred on or
8 between December 1st, 2009 and December 15, 2009.

9 MR. Who is that again? Participating in
10 criminal syndicate?

11 MR. BAKER: Again, Gary Donahoe, Thomas Irvine,
12 David Smith.

13 Does anybody want any of that organizational
14 information repeated? At this time are there any legal
15 questions?

16 There being no legal questions, please
17 deliberate and decide which option you wish to pursue.

18 (Whereupon the County Attorney and the Court
19 Reporter leave the grand jury room, and the following
20 proceedings were had:)

21 THE FOREPERSON: The jury has voted and directs
22 the county attorney to prepare a draft indictment for our
23 consideration.

24 MR. BAKER: The County Attorney has prepared a
25 draft indictment for your consideration. Those admonitions

1 read to you this morning concerning draft indictments are
2 applicable.

3 (Whereupon the County Attorney and the Court
4 Reporter leave the grand jury room, and the following
5 proceedings were had:)

6 MR. BAKER: There has been a question about the
7 lateness of the day. I want to advise members of the grand
8 jury, you are under no time pressures. You know from us,
9 take whatever time you need to deliberate, you know,
10 thoroughly, and come to whatever decision you choose to come
11 to.

12 MR. What if we continue this to Wednesday?
13 What would that protocol do?

14 MR. BAKER: That is an option that you have should
15 you need to do so.

16 MR. Thank you.

17 MR. BAKER: I can also tell you, we will not be
18 kicking you out of the building to deliberate now.

19 (Whereupon the County Attorney and the Court
20 Reporter leave the grand jury room, and the following
21 proceedings were had:)

22 MR. BAKER: Sorry to interrupt. We have been
23 informed by the court that the court and court staff needs
24 to get out of here today. This matter, might I suggest that
25 reconvening on Wednesday as to this may be appropriate, and

1 as before we do anything else, we need to continue with
2 another matter that we did earlier. Thank you.

3 (Whereupon proceedings conclude.)

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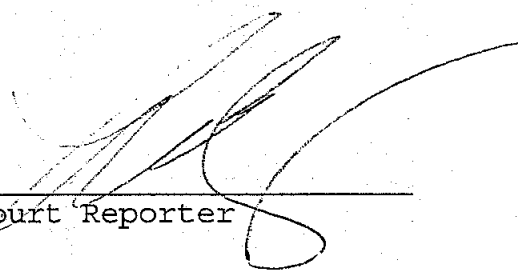
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C E R T I F I C A T E

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I, LISA A. BRADLEY, do hereby certify that the foregoing 114
pages constitute a full, true and accurate transcript of all
proceedings had in the foregoing matter, all done to the
best of my skill and ability.

Dated this 10th day of June, 2010, in Phoenix, Arizona.



Court Reporter

SUPERIOR COURT